

**MINUTES**

**NATIVE AMERICAN GRAVES PROTECTION AND  
REPATRIATION REVIEW COMMITTEE**

**TWENTY-NINTH MEETING**

**MARCH 13-15, 2005**

**KEONI AUDITORIUM  
HAWAII IMIN INTERNATIONAL CONFERENCE CENTER  
HONOLULU, HI**

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## **Background**

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George H.W. Bush on November 16, 1990.

The duties of the Committee are advisory, and include:

1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of NAGPRA to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;
3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;
4. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for disposition of such remains;
5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;
6. Consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA;
7. Performing such other related functions as the Secretary of the Interior may assign to the Committee;
8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and
9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Review Committee's responsibilities during the year.

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Review Committee members are appointed by the Secretary of the Interior from nominations submitted by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's charter, the Manager, National NAGPRA Program, National Park Service or a designee serves as the Designated Federal Officer (DFO), who oversees the activities of the Review Committee and with whom the National Park Service provides administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.cr.nps.gov/nagpra/> (click on "Review Committee").

Notice of this Review Committee meeting was published in the Federal Register on January 6, 2005 (Vol. 70, No. 4, page 1267).

## **The 29th Meeting of the Review Committee**

The 29th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Rosita Worl at 1:00 p.m., Sunday, March 13, 2005, in the Keoni Auditorium, Hawaii Imin International Conference Center, Honolulu, HI.

Review Committee members –

Ms. Rosita Worl – Chair  
Mr. Garrick Bailey  
Mr. Dan Monroe  
Mr. Vincas Steponaitis  
Ms. Vera Metcalf

Designated Federal Officer –

Mr. Timothy McKeown, Senior Program Coordinator, National NAGPRA Program

National Park Service/Department of the Interior staff in attendance –

Ms. Sherry Hutt, Program Manager, National NAGPRA Program, National Park Service  
Ms. Carla Mattix, Division of Parks and Recreation, Office of the Solicitor  
Ms. Lesa Hagel, Contract Transcriptionist

Persons in attendance during part or all of the meeting (names and affiliations as provided at the meeting by attendees) –

Ms. Kehaunani Abad, Honolulu, HI  
Ms. Isabella Abbott, Bishop Museum, Honolulu, HI  
Mr. Alvin Adams, Honolulu, HI  
Ms. EiRayna K. Adams, Daughters and Sons of Hawaiian Warriors - Mamakakaua, Honolulu, HI  
Ms. Melva Aila, Hui Malama I Na Kupuna O Hawai'i Nei, Waianae, HI  
Mr. William J. Aila, Jr., Hui Malama I Na Kupuna O Hawai'i Nei, Waianae, HI  
Ms. Ka'iulani Akanine, University of Hawaii, Manoa, Kane'ohe, HI  
Mr. Charman Akina, Bishop Museum, Honolulu, HI  
Ms. Angie Andrade-Vida, Hale O Na Ali'i, Honolulu, HI  
Mr. Gerald "Shane" Anton, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ  
Ms. Keolanui Awong, Hawaii Volcanoes National Park, Mountain View, HI  
Mr. Edward Halealoha Ayau, Hui Malama I Na Kupuna O Hawai'i Nei, Hoolehua, HI  
Ms. Lori Baker, Honolulu, HI  
Ms. Apolei Kahai Bargamento, Office of Hawaiian Affairs, Native Hawaiian Historic Preservation Council, Aiea, HI  
Ms. Malia Baron, Bishop Museum, Honolulu, HI  
Ms. Geri Bell, Hawaii Island Burial Council, Honaunau, HI  
Ms. Ellyn Bigrope, Mescalero Apache Tribe, Mescalero, NM  
Mr. Bill Billeck, Smithsonian Institution, Washington, DC  
Mr. DeSoto Brown, Bishop Museum, Honolulu, HI  
Mr. William Brown, Bishop Museum, Honolulu, HI  
Mr. Chuck Burrows, Office of Hawaiian Affairs, Native Hawaiian Historic Preservation Council, Honolulu, HI  
Mr. Fred Cachola, Native American Advisory Group to the Advisory Council for Historic Preservation, Ewa Beach, HI  
Ms. Karyn Caldwell, Sparta, WI  
Mr. Bobby Camara, Volcano, HI  
Ms. Pili'aloa Campbell, AKKF/MAK, Honolulu, HI  
Ms. Mary S. Carroll, National Park Service, Denver, CO  
Ms. Laura Carter-Schuster, Hawaii Volcanoes National Park, Volcano, HI  
Ms. Coochie Cayan, Oahu Burial Council, Aiea, HI  
Ms. Jennifer Cerny, Kalaupapa National Historic Park, Kalaupapa, HI  
Mr. Carl Christensen, Honolulu, HI  
Ms. Sara Collins, Honolulu, HI

Mr. David Cox, US Army, PCS4/RCUH, Honolulu, HI  
Ms. Linda Dela Cruz, Trustee, Office of Hawaiian Affairs, Honolulu, HI  
Ms. June Denny, Mescalero Apache Tribe, Mescalero, NM  
Mr. A. Van Horn Diamond, Hale O Na Ali'i O Hawai'i, Van Horn Diamond Ohana, Honolulu, HI  
Ms. A. Van Horn Diamond, Hale O Na Ali'i O Hawai'i, Van Horn Diamond Ohana, Honolulu, HI  
Ms. Kate Diggle, Washington, DC  
Ms. Debra D. Dommek, Anchorage, AK  
Ms. Michelle Kamalu Du Preez-Aiavao, Royal Hawaiian Academy of Traditional Arts, Bishop Museum, Honolulu, HI  
Ms. Elsie S. Kawao Durante, Daughters and Sons of Hawaiian Warriors - Mamakakaua, Kailua, HI  
Mr. Jimmy F. "Jeno" Enocencio, Native Hawaiian Historic Preservation Council, Hilo, HI  
Ms. Stacey O. Espenlaub, University of Pennsylvania Museum, Philadelphia, PA  
Mr. T.J. Ferguson, Smithsonian Institution, Repatriation Review Committee, Tucson, AZ  
Mr. E. Kalani Flores, Kamuela, HI  
Ms. Gillian Flynn, Smithsonian Institution, Washington, DC  
Ms. Kimberly Fondren, Department of the Interior, Washington, DC  
Mr. Lance Foster, Office of Hawaiian Affairs, Honolulu, HI  
Ms. Kimberly K. Garner, Daughters and Sons of Hawaiian Warriors - Mamakakaua, Honolulu, HI  
Ms. Laura Garza, Mille Lacs Band of Ojibwe, McGregor, MN  
Mr. Christopher Goddin, William S. Richardson School of Law, Honolulu, HI  
Ms. Amelia K. Gora, Hawaiian Genealogy Society, Honolulu, HI  
Mr. Keali'i'olu'olu Gora, Honolulu, HI  
Ms. Martha Graham, Alexandria, VA  
Mr. Dell Greek, US Army Reserve Command, Arlington, VA  
Ms. Alice U. Greenwood, Waianae, HI  
Mr. Iku Ha'i William Ha'ole, III, Hale O Na Ali'i O Hawaii, Aiea, HI  
Mr. Cy Harris, Kekumano Ohana  
Mr. Bryan Harry, Honolulu, HI  
Ms. Ulla Hasager, University of Hawaii Manoa/Kapi'olani Community College, Honolulu, HI  
Mr. Rob Hommon, National Park Service, Portland, OR  
Mr. David Hulihee, Bishop Museum, Honolulu, HI  
Mr. Warren Iwasa, Honolulu, HI  
Ms. Ann Iwashita, Bishop Museum, Honolulu, HI  
Mr. Boyd Jefferson, Lummi Nation, Bellingham, WA  
Mr. Joseph T. Joaquin, Tohono O'odham Nation, Sells, AZ  
Ms. Marlene Johnson, HHF, Juneau AK  
Ms. Adrienne Kaepler, Smithsonian Institution, Washington, DC  
Ms. Kainani Kahaunaele, Molokai 'Ohana, Hui Malama I Na Kupuna O Hawai'i Nei, Hilo, HI  
Mr. Melvin D. Kalahiki, Na Papa Kanaka o Puu Kohola, Kaneohe, HI  
Ms. Paulette Kaleikini, Honolulu, HI  
Ms. Lilikala Kame'eleihiwa, Kamakakuokalani Center for Hawaiian Studies, University of Hawaii, Honolulu, HI  
Ms. Betty Lou Kam, Bishop Museum, Honolulu, HI  
Mr. Micah Kane, Department of Hawaiian Home Lands, Honolulu, HI  
Mr. Halona Kaopu'iki, Molokai, HI  
Ms. Koalani Kaulukukui, University of Hawaii School of Law, Kaneohe, HI  
Ms. Kathy Kawelu, University of California, Berkeley, CA  
Ms. Margaret Kealanahale, Hale O Na Ali'i O Hawaii, HI  
Ms. Maggie Keener, Hale O Na Ali'i, Mililani, HI  
Mr. Abraham N. Keliinui, Daughters and Sons of Hawaiian Warriors – Mamakakaua, Waimanalo, HI  
Mr. Adrien Kealoha Keohokalole, Keohokalole Ohana, HI  
Mr. Dennis Kaiwi Keohokalole, Keohokalole Ohana, HI  
Ms. Emalia Keohokalole, Keohokalole Ohana, HI  
Mr. Kamika Kepaa, Native Hawaiian Historic Preservation Council, Lahaina, HI  
Mr. Colin Kippen, Kailua, HI  
Mr. Kanaloa Koko, Royal Order of the Crown - Kaiwiolalo, Honolulu, HI  
Ms. Karen K. Kosasa, University of Hawaii, Honolulu, HI  
Ms. Shannon Kovac, Honolulu, HI

Mr. Kehaloha Kuhea, Kuhea Ohana, Mililani, HI  
Mr. William Lawson, Phua Ohana, Honolulu, HI  
Mr. Ricardo Leonard, Salt River Pima Maricopa, Scottsdale, AZ  
Mr. Paul Lumley, Department of Defense, Arlington, VA  
Ms. Kathryn Lynn, US Department of the Interior, Washington, DC  
Ms. Ann Machado, Hale O Na Ali'i O Hawaii, Honolulu, HI  
Ms. Amy Maddock, Honolulu, HI  
Ms. Ipolani Ma'e, Moloka'i Pula O'o, Kualapuu, HI  
Mahilani, Ohana O Ka Hale La'au, Kahale Pa Iwi, Kamuela, HI  
Mr. Attwood Makanani, Protect Kahoolawe Ohana, Kauai, HI  
Mr. Robert N. Mansfield, Na Lei Ali'i Kawanakoa, Honolulu, HI  
Mr. Kai Markell, Office of Hawaiian Affairs, Honolulu, HI  
Ms. Cyd Martin, National Park Service, Denver, CO  
Mr. Marques Marzan, Bishop Museum, Honolulu, HI  
Mr. George "Boots" Matthews, Native Hawaiian Historic Preservation Council, Honolulu, HI  
Ms. Hana "Sweet" Matthews, Native Hawaiian Historic Preservation Council, Honolulu, HI  
Mr. Charles Kauluwehi Maxwell, Hui Malama I Na Kupuna O Hawai'i Nei, Pukalani, HI  
Mr. Mark Kawika McKeague, 'Ilio'ulaokalani, Honolulu, HI  
Ms. Edith K. McKinzie, Na Lei Ali'i Kawanakoa, Pearl City, HI  
Ms. Buffy McQuillen, Yurok Tribe, Klamath, CA  
Mr. Mattox Metcalf, Anchorage, AK  
Mr. Kealakani Meyers, Native Hawaiian Historic Preservation, Papaikou, HI  
Mr. Samuel A. Moose, Mille Lacs Band of Ojibwe, Onamia, MN  
Ms. Nell Murphy, American Museum of Natural History, New York, NY  
Ms. Angela Neller, Wanapum Heritage Center, Ellensburg, WA  
Mr. Darin Oda, Lihue, HI  
Ms. Cynthia Orlando, Hawaii Volcanoes National Park, Volcano, HI  
Mr. Landis Ornellas, Hui Malama I Na Kupuna O Hawai'i Nei, Waianae, HI  
Ms. Maria Kaimi Orr, Mililani, HI  
Mr. George "Keoki" Pescaia, Molokai Nui a Hina, Hoolehua, HI  
Ms. Miki'ala Pescaia, Molokai, Ho'olehua, HI  
Ms. Poemaleilani Pescaia, Molokai, Ho'olehua, HI  
Ms. Ipolani Pua'a, Molokai, HI  
Mr. Ikaika Pua'a, Molokai Pule O'o, Kaunakakai, HI  
Ms. Hannah Wahinemaikai O Kaahumanu Kelii'ulanani Ole O Kalama Kane Reeves, Pukaana O Hawaii & Na Kupuna O Hawaii & 20 Churches of Hawaii, Kailua-Kona, HI  
Mr. Butch Richards, Office of Hawaiian Affairs, Honolulu, HI  
Ms. Helen Robbins, Field Museum, Chicago, IL  
Ms. Alyson Rollins, Lummi Nation, Bellingham, WA  
Mr. Roger G. Rose, Honolulu, HI  
Ms. Dutchie Kapu Saffery, Hui Kako'o Aina Ho'opulapula, Keaau, HI  
Ms. Molly Schmit, University of Hawaii Law School, Honolulu, HI  
Ms. Larissa Schwartz, William S. Richardson School of Law, Honolulu, HI  
Mr. Duncan Ka'ohuoka'ala Seto, Hui Malama I Na Kupuna O Hawai'i Nei, Miliani Town, HI  
Mr. Kevin Shimoda, Department of the Interior, Office of the Inspector General, Honolulu, HI  
Ms. B.J. Short, Bishop Museum, Honolulu, HI  
Ms. Olive Souza, Daughters and Sons of Hawaiian Warriors - Mamakakaua, Kailua, HI  
Ms. Miriam Stark, Society for American Archaeology, Honolulu, HI  
Mr. La'akea Sukanuma, Royal Hawaiian Academy of Traditional Arts, Honolulu, HI  
Mr. Paul Sullivan, US Navy, Pearl Harbor, HI  
Ms. JoJo Tanimoto, Office of Hawaiian Affairs, Honolulu, HI  
Mr. Ty Tengan, University of Hawaii at Manoa, Honolulu, HI  
Mr. Ralph Tom, Lummi Nation, Bellingham, WA  
Ms. Maria Tripp, Yurok Tribe, Klamath, CA  
Mr. David M. Vera Cruz, Kamuela, HI  
Ms. Deborah Waite, University of Hawaii, Honolulu, HI  
Mr. Herman A. Williams, Jr., Tulalip Tribes, Tulalip, WA

Mr. Herman A. Williams, Sr., Tulalip Tribes, Tulalip, WA  
Mr. James Wright, Na Lei Ali'i Kawanakoa, Honolulu, HI  
Ms. Jodi Yamamoto, Bishop Museum, Honolulu, HI  
Mr. Darrell Yagadich, Department of Hawaiian Home Lands, Honolulu, HI  
Ms. Ginger Yong, Hale O Na Ali'i, Kaneohe, HI  
Mr. Frederick F. York, National Park Service, Pacific West Region, Seattle, WA  
Mr. Richard Young, Tulalip Tribes, Tulalip, WA

## **Introduction**

A Native Hawaiian prayer was offered by members of Hale O Na Ali'i O Hawai'i . Mr. Mattox Metcalf and Ms. Debbie Dommek presented a traditional Alaskan dance. Ms. Worl welcomed the members of the audience to the meeting. Mr. McKeown introduced the Review Committee members and confirmed that the Review Committee had quorum present at the meeting. Mr. McKeown gave a brief overview of the responsibilities of the Review Committee under NAGPRA and advised the Review Committee members that all Federal Advisory Committee Act (FACA) requirements had been fulfilled in calling the meeting. National NAGPRA Program staff members who were present at the meeting were introduced.

## **Comments and Review of the Agenda – Designated Federal Official**

Mr. McKeown gave a brief review of the agenda, which included three new disputes and reconsideration of a fourth. Mr. McKeown described the Review Committee's role in the dispute process. By regulation, the Review Committee may facilitate the informal resolution of disputes among interested parties, including convening meetings between parties in disputes, making advisory findings as to contested facts, and making recommendations to the disputing parties or to the Secretary as to the proper resolution of disputes consistent with the regulations and Act. Mr. McKeown stated that issues involving procedure, allegations of failure to comply, excavation and discovery provisions, and issues involving state or local law were beyond the Review Committee's jurisdiction.

## **Dispute Resolution**

Mr. Steponaitis asked for clarification of Federal Register notice requirements in the dispute procedures, specifically related to the Honolulu meeting. Mr. McKeown stated that although a notice with specific information on the disputes was not published due to Federal Register time constraints, the initial notice for the Honolulu meeting that included disputes on the agenda satisfied the legal requirements of FACA. Personal invitations to attend the meeting were sent to all affected parties.

In reference to the dispute involving Hawaii Volcanoes National Park, Mr. Steponaitis asked about the applicability of the conflict of interest clause in the Review Committee's dispute resolution procedures to the DFO. Ms. Hutt stated that when a National Park Service unit is a party to a dispute, the parties themselves determine whether there might be the appearance of a conflict of interest in having a NPS employee serve as DFO. In this case, neither Hui Malama I Na Kupuna O Hawai'i Nei nor Hawaii Volcanoes National Park objected to Mr. McKeown serving as DFO. Ms. Hutt added that Review Committee Chair Rosita Worl was involved in the discussions and that this process will be used in future disputes.

Mr. Steponaitis asked for clarification of the change in the Dispute Resolution Procedures from involved party to interested party. Ms. Mattix stated the wording was changed to correspond to the actual wording in the regulations under 43 CFR 10.17 for dispute resolution. Mr. McKeown stated that for this meeting affected parties were those parties identified by the museum or Federal agency as having already made a claim to repatriate the cultural items in question. Individuals addressing the Review Committee as members of the public might also have an interest that was never expressed to the institution.

## **Dispute Between Hui Malama I Na Kupuna O Hawai'i Nei and the Bishop Museum Regarding Three Unassociated Funerary Objects from Molokai**

Mr. McKeown explained that the dispute was submitted by Hui Malama I Na Kupuna O Hawai'i Nei on November 8, 2004 and that additional documentation was provided by Hui Malama and the Bishop Museum. Letters inviting other affected parties to participate in the hearing were sent to the Molokai Island Burial Council, Office of Hawaiian Affairs, Na Lei Alii Kawanakoa, and Royal Academy of Traditional Arts. Mr. McKeown determined that the allegation as to whether the Bishop Museum had failed to comply with NAGPRA was beyond the Review Committee's jurisdiction and referred the matter to the Director, National Park Service for investigation. The dispute proceedings were chaired by Mr. Steponaitis.

### **Hui Malama I Na Kupuna O Hawai'i Nei**

Mr. Charles Kauluwehi Maxwell offered a *pule* (prayer).

Mr. Edward Halealoha Ayau stated that Hui Malama I Na Kupuna O Hawai'i Nei initially requested the Review Committee's assistance in resolving its dispute with the Bishop Museum on November 8, 2004. At that time, three issues were in dispute: 1) whether or not the Bishop Museum had right of possession to a cowrie shell and carved wood figure previously determined to be unassociated funerary objects that were culturally affiliated with Hui Malama, Molokai Island Burial Council, and Office of Hawaiian Affairs; 2) whether or not a rock oyster pendant was an unassociated funerary object; and 3) if so, whether the Bishop Museum has right of possession to the rock oyster pendant.

Following Hui Malama's request to the Review Committee, the Bishop Museum determined in a letter dated December 10, 2004, that: 1) Hui Malama had presented evidence, which standing alone and before introduction of evidence to the contrary, supported a finding that the Bishop Museum does not have right of possession to the cowrie shell and rock oyster pendant; and 2) that no claimant has discharged its initial burden to show that the Bishop Museum does not have a right of possession to the carved wood figure. Further, even assuming that this initial burden had been discharged, the Bishop Museum asserted a right of possession as a good-faith purchaser for value from a Native and, according to the museum, "there is no evidence that the Native was a thief."

The cowrie shell was determined to be an unassociated funerary object and culturally affiliated to Hui Malama and at least three other organizations. A notice was published in the Federal Register on May 2, 2003, and the *leho* (cowrie shell) was available for repatriation. The Bishop Museum accepted one additional claimant in December 2004. The Bishop Museum's failure to repatriate the object in a timely manner to Hui Malama was the subject of the aforementioned investigation.

The rock oyster pendant was determined to be an unassociated funerary object, culturally affiliated to Hui Malama and at least one other organization. However, it was not included in the Federal Register notice with the other objects. The Bishop Museum says the strength of cultural affiliation needs to be reviewed. Before repatriation, a Federal Register notice will need to be published.

The carved wood figure has been determined to be an associated funerary object. The carved wood figure has been culturally affiliated with Hui Malama and at least one other Native Hawaiian organization. However, the Bishop Museum claimed to have right of possession and did not repatriate. Hui Malama's position was that the Bishop Museum did not obtain the object with the voluntary consent of a person who had the authority to alienate it. Hui Malama's position was that they have presented evidence, which standing alone before introduction of evidence to the contrary, supports the finding that the Bishop Museum does not have the right of possession of the carved wood figure and must therefore make this object available for repatriation to Hui Malama based on its recognized claim.

Mr. Ayau provided the Review Committee members with a copy of Hui Malama's proposed solutions to the dispute.

Ms. Poemaleilani Pescaia, age 14, stated that for generations, the ancestors have protected, guided, taught, and prepared the people for future actions. The ancestors have taught respect, while encouraging people to be humble and to carry out the wishes of the elders, not to be greedy or selfish. The *moepu* (things placed with the dead) belongs to the ancestors, not to the Bishop Museum. To ignore the fact that the *moepu* belongs to the ancestors would be to ignore the ancestors' teachings. This is the way to show honor. The *moepu* belong resting alongside the ancestors.

Mr. Keoki Pescaia stated that the *moepu* should be returned to its rightful place of rest on Molokai. Disturbing remains and desecrating their resting place is wrong. Mr. Pescaia stated that he would not want his remains to be disturbed. If someone takes something from a final resting place, it does not belong to that person.

Mr. Nelson Ikaika Pua'a, age 16, stated that he has always known that the sand dunes above Mo'omomi were *kapu* (forbidden). The *kupuna* (ancestors) were buried there. Mr. Pua'a has honored the sacredness of his ancestors as an obedient, respectful grandchild. Mr. Pua'a stated that he is hurt when people disturb the *kupuna* by entering the sand dune area, and he is offended when something is taken from them because that is stealing. The Bishop Museum bought something from someone who had no authority to remove it. The Bishop Museum has played a huge role in victimizing ancestors and continues to do so each day the ancestors wait for the *moepu* to be returned.

Ms. Ipolani Ma'e, age 16, stated that the intent of NAGPRA is to protect ancestral remains, their possessions that were buried with them, and objects of great significance culturally to Native people. The three *moepu* under discussion clearly qualify for the protection of NAGPRA law. Proper procedures were followed by the claimant and the same good-faith trust was expected to be found in the Bishop Museum, but that has not been the case. Ms. Ma'e stated that as a descendant of those very *iwi* (bones) and *aumakua* (deities), it is her duty to see their wishes carried out. To be chosen to hide someone's remains was a great honor. The wishes and teachings of the *kupuna* must be honored, and the burials respected. Ms. Ma'e stated that she must return the aloha of her *kupuna* by watching over what remains of them on this earth and speaking on their behalf for the expedient return of their *moepu*.

### **Bishop Museum**

Mr. William Brown, president of the Bishop Museum, stated that the *ki'i* (figure) was purchased for the Bishop Museum from a "native" who said that it was found in a cave; the pendant was found on a west Molokai beach by Ms. Emma Turnbull, who wrote that bones were present in the area; the cowrie was found by Mr. Jack Porteus at Mo'omomi. The Bishop Museum is moving forward in this matter on the premise that each of these items is an unassociated funerary object for purposes of NAGPRA. The Bishop Museum has asserted right of possession to the *ki'i*, but not the cowrie or the pendant. The Bishop Museum is currently reviewing competing claims for the cowrie and the pendant by multiple Native Hawaiian organizations. Hui Malama has asserted that the Bishop Museum has violated NAGPRA by not repatriating the *ki'i* and the cowrie. The Bishop Museum has complied fully with NAGPRA and has provided the Review Committee with supporting documentation. However, the Bishop Museum submits that legal judgments on compliance are properly matters for enforcement authorities and the courts and not the Review Committee. Mr. Brown stated that following the allegation of a violation, a review by the chief ranger is warranted, which was what happened in this case. Following the review by the chief ranger, NAGPRA then requires a formal hearing. However, no further action has been taken, including no formal hearing. Regarding competing claims, the Bishop Museum is moving forward with the two items for which it does not have right of possession. NAGPRA has no provisions that terminate the period of time when consultation with other claimants may happen, and the Bishop Museum needs to resolve the competing claims issue before repatriating the items.

The Bishop Museum's position on right of possession of the wood *ki'i* is based on legal interpretation of the text and the legislative history of NAGPRA, developed in consultation with both in-house and outside counsel. Mr. Brown stated that the Review Committee should reach conclusions and make recommendations on this issue only after a comparable extensive review. NAGPRA does not require repatriation of unassociated funerary objects if the museum has right of possession. The statute states that right of possession is possession obtained with the voluntary consent of an individual or group that had authority of alienation. Under the statute, right of possession of unassociated funerary objects is to be determined under otherwise applicable property law. Following the recommendation of outside counsel regarding ownership of these items under Hawaiian State law, the Bishop Museum is asserting right of possession for the wood *ki'i*.

Mr. Brown suggested that the Review Committee could recommend mediation to help resolve the conflict between claimants to the Kawaihae caves artifacts, and the Review Committee could recommend that the Bush Administration support additional funding to enhance access to and educational programs for cultural artifacts.

Ms. Isabella Abbott, Bishop Museum Board member, stated that in her opinion the objects under discussion were not *moepu* or funerary objects. Ms. Abbott stated that the wood *ki'i* was found in a cave with other objects consistent with objects left as offerings to the God Ku, a Hawaiian God of canoe making. In addition, some families, including

her own, used caves for storage. Ms. Abbott stated that the cowrie shell and rock oyster pendant were both found on the beach at Mo'omomi, world-famous for its large sand dunes. Mo'omomi was a hunting place for birds, and bird fossils can be found in the ever-shifting sand dunes. Human habitations are located nearby. The cowrie shell and rock oyster pendant could easily have become uncovered, and then discovered, by the wind shifting the sand. Ms. Abbott stated that none of the three items could be considered *moepu*.

Mr. Charman Akina, Bishop Museum Board member, stated that NAGPRA works very well for Native Americans on the continental United States. Hawaiians are not tribal and as of yet do not have sovereignty. No one person or organization can represent the general Hawaiian population. All Hawaiians agree that bones and artifacts should be cared for very carefully, by lineal family members if possible or by organizations. The Hawaiian culture has been very much endangered and continues to be diluted. Hawaiians need to know their aboriginal past and the only way to know the past is through the artifacts. Artifacts can only be cared for within a museum setting. Mr. Akina has worked with the Bishop Museum to bring the artifacts to the Hawaiian people and the public so Hawaiians and others can learn about the Hawaiian aboriginal culture. Right now, the only place the Hawaiian aboriginal culture exists is through the artifacts in the Bishop Museum. The Bishop Museum was started by *ali'i* (Hawaiian royalty) looking to preserve their culture for Hawaiians.

### **Review Committee Questions**

Ms. Worl asked Ms. Abbott about her definition of funerary object, given that Mr. Brown stated that the objects in question were funerary objects. Ms. Abbott stated that she would define funerary objects as objects unequivocally buried with bones. Mr. Brown added that he agreed with Ms. Abbott's assessment that the objects were not funerary objects. However, the Bishop Museum had previously classified the objects as unassociated funerary objects and Mr. Brown was reluctant to change the Bishop Museum's position. Mr. Monroe asked who would have had the authority to alienate the *ki'i*. Mr. Brown stated that right of possession is defined by the limits of the takings clause of the Fifth Amendment; if the nature of the transfer is such that a Fifth Amendment property right is created, then right of possession obtains. For personal property, there rarely is title. The rock oyster pendant was found on the beach and then given to the museum. The *ki'i* was purchased from a native who said he found it in a cave. The Bishop Museum was a good-faith purchaser with no knowledge of theft. Mr. Maxwell stated that when an object is found, such as the rock oyster pendant, an attempt should be made to locate the owners. In addition, consideration has to be given to what purpose these items were made; was the item made for those in the present or was it made hundreds of years ago to accompany people in their eternal journey in death. Mr. Ayau stated that in the Federal Register notice, the *ki'i* was described as being found wrapped in *kapa* (bark cloth) with *'awa* (native shrub) and bones of red fish in a cave, which was believed to have been a burial cave.

Mr. Monroe asked about Hawaiian laws regarding disinterment of human remains from burial sites. Mr. Brown stated that the Bishop Museum sought the assistance of counsel in this matter and received a strong, supportive opinion that the Bishop Museum is the owner under Hawaiian State law. If the objects were not being considered as unassociated funerary objects, the Bishop Museum would probably assert right of possession over all three. Mr. Steponaitis asked Hui Malama whether in their opinion museums can change a notice once the notice is published. Mr. Ayau stated that changes could be made before the three requirements of repatriation are met, but changes should not be made after the three requirements of repatriation are met, as the parties are bound by the 90-day rule which states that if the three requirements are met the museum has to repatriate. Mr. Ayau stated if a claim is recognized and the process underway, that additional claims have to meet the repatriation requirements before the end of the 90-day period. Mr. Brown stated agreement that if all requirements are met, then the 90-day period is applicable and the museum has an obligation to repatriate within 90 days once the process is complete. However, if valid competing claims arise, then the situation has two possible imperfect actions: 1) to make the earlier claimant wait, and 2) to potentially give the item to the wrong claimant.

### **Affected Parties**

Mr. Lance Foster, Director of Native Rights, Land, and Culture, Office of Hawaiian Affairs, stated OHA was created under the State of Hawaii Constitution, both as a fiduciary trust and as an advocate for the rights of all Native Hawaiians. As a named Native Hawaiian organization in both NAGPRA and the State Historic Preservation statute, OHA must exercise its important *kuleana* (responsibility), in a manner cognizant of the sometimes diverse viewpoints of its beneficiaries. While its current beneficiaries come from every island in Hawaii as well as the mainland, OHA also considers those who have passed on and those yet unborn. In regard to the dispute for three

unassociated funerary items from Molokai, OHA has sought to enter claims under NAGPRA for individuals, families, and communities who may not have access to the Federal Register and who may become aware of cultural situations through oral communication, often after deadlines have passed. OHA was recently contacted by Kamalama O'Molokai to represent their interests with regards to the wood *ki'i*. OHA has initiated consultation with this organization to determine the nature of their affiliation and the best way OHA can assist in their organization. In the absence of any additional request for assistance, OHA will formulate a position and take action on behalf of its beneficiaries. Mr. Monroe asked about OHA's position regarding the Bishop Museum's claim to right of possession. Mr. Foster stated that OHA had no formal position at the time.

Mr. La'akea Sukanuma gave a summary of the Royal Hawaiian Academy of Traditional Art's position as a recognized claimant in this matter. The Royal Hawaiian Academy of Traditional Arts submits the following: 1) the Bishop Museum appears to be in compliance with NAGPRA; 2) the Royal Hawaiian Academy of Traditional Arts does not believe that anyone can determine whether the objects were definitely funerary, but was willing to accept the Bishop Museum's designation; 3) the Royal Hawaiian Academy of Traditional Arts cannot refute the Bishop Museum's claim of right of possession of the *ki'i*, because to do so would be to attack the Native Hawaiian who sold the *ki'i* to the Bishop Museum; 4) the acceptance and hearing of this so-called dispute is premature, unnecessary, and seems to be the result of Hui Malama's need to hold as many Hawaiian artifacts as they can.

### **Public Comment**

Mr. William Aila stated he is from the district of Waianae, on the western end of the island of Oahu. The Bishop Museum made assertions that because King Kamehameha V owned the land on which these items were found that the Bishop Museum has right of possession. In response, Mr. Aila stated that the *ali'i* understood that there were things that could not be possessed, things of a spiritual nature, cultural nature, and physical nature, such as water and air. The idea of land ownership was a Western concept introduced to Native Hawaiians. So both the spiritual basis and the legal basis must be considered. The legal basis can change through changes in law or interpretation. The spiritual basis of these items and their importance to the people of Molokai cannot change. Mr. Aila respectfully disagreed with the notion that objects must be curated in museums in order to study and preserve Hawaiian culture. Mr. Aila stated that Hawaiian culture is being practiced across Hawaii. In fact, many Hawaiians live their Hawaiian culture every day. Mr. Aila practices his culture every day. He learned it from his *kupuna* (elders) and will teach it to his *mo'opuna* (grandchildren). Mr. Aila stated that it is very cultural to err on the side of caution when you do not have all of the information. In this case, it is the belief of many people that these objects belong to the ancestors. So if there is no overwhelming data that says otherwise, then the process should be to err on the side of caution and put them back with the ancestors. Mr. Aila thanked the Review Committee members for coming to Hawaii and for addressing these issues.

Mr. Halona Kaopu'iki described his traditional upbringing and stated he comes from a warrior bloodline. Mr. Kaopu'iki stated he came to take home what belongs to his people. Mr. Kaopu'iki stressed how important these items are for his people and again asked that he be allowed to take them home.

Mr. Charles Kauluwehi Maxwell, Chair of the board of Hui Malama, stated that he has been involved in the return of *iwi* for over 50 years. He described specific instances of repatriation, including the return of over 800 human remains from the proposed Ritz Carlton Hotel site, and stated he participated in protests that ultimately stopped that construction. Mr. Maxwell stated that handling the *iwi* was a responsibility only allowed to a few people. The items were not made for people today, but were meant to accompany the *iwi* in their spiritual eternity. Mr. Maxwell stated that everything around the *iwi* was sacred, including the ground, the dirt, and the entire cave. Mr. Maxwell asked the Review Committee to please put the objects back on Molokai where they belong.

Ms. Hannah Reeves gave her full name, Hannah Wahinemaikai O Kaahumanu Kelii'ulanani Ole O Kalama Kane Reeves. Ms. Reeves stated she was of the royal line and gave a brief description of her family and Hawaiian royal lines. Ms. Reeves stated that she holds the United States Government responsible for the damage done to Hawaii and all Hawaiians. Ms. Reeves stated that Hawaiians need to bring their people home, all *iwi* and everything with them. The Hawaiians suffered for hundreds of years and continue to suffer through wrongful treatment by the government and Bishop Museum. Hawaiians should be treated like human beings. Ms. Reeves thanked the Review Committee for the opportunity to speak.

## **Review Committee Questions**

Ms. Mattix stated that NAGPRA defines the criteria for repatriation at 43 CFR 10.10. Upon the request of a Native Hawaiian organization, the museum must expeditiously repatriate the item if all of the following criteria are met: 1) the object meets the definition of human remains, funerary object, sacred object, or object of cultural patrimony as established in the statute and regulations; 2) a relationship of shared group identity can be shown between a present-day Indian tribe or Native Hawaiian organization and the identifiable earlier group from which the cultural item came as established through the summary, consultation, and notification procedures outlined in the regulations or by presentation of a preponderance of the evidence by the Indian tribe or Native Hawaiian organization; 3) the Native Hawaiian organization has to present evidence, which if standing alone before the introduction of evidence to the contrary, would support a finding that the museum does not have a right of possession; and 4) the museum has an opportunity to present evidence to overcome any assertion that it does not have right of possession.

Mr. Bailey stated that the Review Committee cannot work in any judicial capacity; the Review Committee members make judgments based on a collective perception from their different backgrounds. Mr. Steponaitis stated that he agreed with Mr. Bailey but added that the Review Committee members needed to be mindful of the law when resolving disputes. Mr. Monroe asked Ms. Mattix to speak on the view of the Office of the Solicitor regarding the Bishop Museum's argument to right of possession based on the Fifth Amendment takings clause. Ms. Mattix stated that the Bishop Museum is asserting right of possession and using the Fifth Amendment takings clause as part of their evidence. The Bishop Museum also raised the issue of good faith purchaser. Ms. Mattix stated that good faith purchase falls under property law, and consideration of the Fifth Amendment is a Constitutional issue. Under the Fifth Amendment, the Federal government cannot force an individual or an organization to turn over property without just compensation. If the Bishop Museum establishes that it has a property right under state law and the Federal government is telling the Bishop Museum through NAGPRA to turn over the property, then the Fifth Amendment can be used. Ms. Worl stated that the Review Committee should also consider cultural laws governing ownership. Ms. Mattix stated that the statute says right of possession shall be determined as provided under otherwise applicable property law. Mr. Bailey stated that additional consideration needs to be given to state inheritance laws and any applicable cultural exceptions. Ms. Hutt stated that the law accounts for the cultural basis described by Mr. Bailey.

## **Review Committee Final Discussion**

Regarding the wood *ki'i*, Mr. Monroe stated that Bishop Museum claims to have right of possession of the *ki'i* based on acquisition of the object from a native who found it in a cave. Mr. Monroe stated that claim would require that the Bishop Museum show that a lineal descendant or some other group had authority to alienate the object, and no such evidence was presented. Mr. Monroe stated that there is no merit to the Bishop Museum's argument that it has right of possession based on textural analysis and legislative history of the NAGPRA statute with respect to the Fifth Amendment takings clause. The Bishop Museum agreed on the classification of this object as an unassociated funerary object. Mr. Monroe recommended that the Review Committee adopt the following position: The claim to right of possession by the Bishop Museum does not meet the statutory requirements as spelled out in NAGPRA statutes. Mr. Monroe recommended that the object be repatriated. The Review Committee members agreed. The Review Committee members further agreed to encourage the Bishop Museum to continue its process of determining cultural affiliation in order to complete repatriation to the most appropriate or closest culturally affiliated organization. Mr. Monroe stated it was important to note that the origin of the object was from Molokai, and he encouraged the Bishop Museum to take that into account in terms of making a decision regarding final disposition.

Regarding the cowrie shell, Mr. Steponaitis stated that the Bishop Museum has agreed not to assert right of possession. A notice was published in the Federal Register for this object. Both the claimant and the Bishop Museum agreed on the classification of this object as an unassociated funerary object. The Review Committee members agreed to recommend that the Bishop Museum continue its process of determining cultural affiliation in order to complete repatriation to the most appropriate or closest culturally affiliated organization.

Regarding the rock oyster pendant, Mr. Steponaitis stated that the Bishop Museum has agreed not to assert right of possession. No Federal Register notice has been published. The Bishop Museum and at least one claimant agree that the classification of this object should be as an unassociated funerary object. The Review Committee members agreed to recommend that the Bishop Museum expeditiously publish a notice and proceed with the process of determining cultural affiliation in order to complete repatriation.

The Review Committee members noted that there are multiple claims for the items and that while the process of making determinations of cultural affiliation for these objects is ongoing, additional claimants might come forward. Mr. Steponaitis recommended the following finding: Repatriation may take place 90 days after publication in the Federal Register; however, there is nothing in NAGPRA that states that repatriation is automatic at the end of the 90-day period. The Review Committee members agreed to inclusion of the finding. Mr. Steponaitis recommended an additional finding: Good faith consultation is key to the process of repatriation and consultations are most effective when carried out in an atmosphere of mutual respect and trust. This dispute is strongly colored by a lack of trust among the parties, which was brought about by actions on both sides. A key element in resolving this dispute without litigation is to reestablish that mutual respect and trust. Mr. Bailey stated that he would not like to add the wording to the recommendation, but felt having the wording on the public meeting record should suffice. Mr. Monroe stated he was glad Mr. Steponaitis made the statement, but agreed with Mr. Bailey not to include it as a finding. Ms. Worl expressed her appreciation for the statement. Ms. Worl stated that the dispute that was submitted contained an assertion that the Bishop Museum failed to comply with NAGPRA. Since the Review Committee was advised that that issue was beyond the Review Committee's purview, Ms. Worl requested that the DFO write a letter to the Director of NPS asking for a status report on the investigation by NPS civil penalties in regard to the issues that were outlined. Ms. Worl stated that the Review Committee wasn't asking for details, but would like confirmation that the investigation is ongoing. Mr. McKeown stated that a Federal Register notice would be published with the Review Committee's findings and recommendations regarding this dispute.

### **Dispute Between Hui Malama I Na Kupuna O Hawai'i Nei and the Bishop Museum Regarding the Kalaina Wawae**

Mr. McKeown explained that Hui Malama I Na Kupuna O Hawai'i Nei submitted the dispute on November 29, 2004 and that additional documentation was provided by Hui Malama I Na Kupuna O Hawai'i Nei and the Bishop Museum. Hui Malama 'O Mo'omomi was also invited to participate in the hearing as an effected party. Mr. McKeown determined that the Hui Malama I Na Kupuna O Hawai'i Nei's request for a recommendation regarding the finality of repatriation would appear to be beyond the Review Committee's purview since it is likely dependent on provisions of state law or other legal authorities. This dispute was chaired by Ms. Metcalf.

#### **Hui Malama I Na Kupuna O Hawai'i Nei**

Mr. Edward Halealoha Ayau stated that this dispute involves the Kalaina Wawae, which consists of three sandstone blocks with carvings of human footprints and a pair of boot marks. The carvings were made by a *kaula* (prophet) named Ku'una, a woman who had a vision that strange men would arrive on the island shores, leave strange footprints in the sand, and claim the land for themselves. Her vision was not well-received by the people of Molokai, and in an attempt to prevent this vision from being realized the people stoned Ku'una to death. Two hundred years after her death, Ku'una's prophecy came true with the arrival of Captain Cook. This *mo'olelo* (story) is an essential part of the cultural history of Molokai. In 1909, with permission from Molokai Ranch, three sections of the Kalaina Wawae were cut out of the sandstone shelf and taken to Bishop Museum.

In 1993 and 1998, Hui Malama I Na Kupuna O Hawai'i Nei submitted a NAGPRA claim for Kalaina Wawae as cultural property. The Bishop Museum responded in a February 1, 1999 letter and agreed to repatriate the Kalaina Wawae as cultural patrimony to the people of Molokai through Hui Malama I Na Kupuna O Hawai'i Nei. On April 9, 1999, a Notice of Intent to Repatriate was published in the Federal Register, and 30 days passed with no competing claims. The Molokai community requested additional time to discuss treatment of the Kalaina Wawae upon its return. After four years, a decision was made by Hui Malama 'o Mo'omomi to place the three sandstones permanently at Mo'omomi. Permission was sought and granted by the landowner, Department of Hawaiian Home Lands, and a NAGPRA grant was sought for this purpose.

At a November 13, 2002 site visit, Mr. Brown informed those present that he opposed the repatriation of Kalaina Wawae through NAGPRA but was willing to allow the return independent of the Federal repatriation process. After consideration, the Hui Malama I Na Kupuna O Hawai'i Nei board of directors agreed to engage in the discussion but not to withdraw its recognized NAGPRA claim. A three-month negotiation between the parties resulted in an agreement wherein the Kalaina Wawae would be returned to Molokai, the Bishop Museum would retain ownership and help fund the return, and that the sandstones could not be removed from the island without the consent of all parties. At the final signing, Mr. Brown unilaterally removed Hui Malama I Na Kupuna O Hawai'i Nei from the

document. Mr. Mac Poepoe, head of Hui Malama 'o Mo'omomi, signed the private agreement under protest on March 4, 2003, the same day Hui Malama I Na Kupuna O Hawai'i Nei and Hui Malama 'o Mo'omomi took possession of the sandstones. On November 29, 2004, Hui Malama I Na Kupuna O Hawai'i Nei submitted a request for the Review Committee to consider the dispute, mainly whether or not the three sandstone blocks known as Kalaina Wawae qualify as cultural patrimony. Hui Malama I Na Kupuna O Hawai'i Nei asserts this claim in order to ensure that the Kalaina Wawae cannot be removed from Molokai.

Film presentation: Hui Malama I Na Kupuna O Hawai'i Nei presented two short films. The first film was a narrative of the story of the Kalaina Wawae (summarized above by Mr. Ayau). The second film was a series of statements from Molokai residents speaking on the cultural significance of the Kalaina Wawae.

Ms. Mikiala Ayau-Pescaia stated that she was born and raised on Molokai, following many generations of her family. Ms. Ayau-Pescaia stated that in 1999, she was hired by Bishop Museum in the collections department. She found the Kalaina Wawae in a storage area with no environmental controls, covered in waste and dirt materials. Ms. Ayau-Pescaia apologized to the Kalaina Wawae and promised to give her justice. The Kalaina Wawae is integral to Molokai's spiritual survival as an island. Ms. Ayau-Pescaia stated that during the video filming a lot of people did not understand why there would be a hearing because Molokai people don't believe that anybody can own the carving. Molokai is famous for its *kahuna* (priests). The arts, healing, hula, histories, genealogies are all stored on Molokai in Molokai people. The *kahuna* knew that they were only stewards for the knowledge, the sacred sites, and the sacred stones. The Bishop Museum's claim that they have title is simply impossible. The video testimony ended with Molokai residents, supporters, and Bishop Museum staff at the return of the Kalaina Wawae chanting that the Kalaina Wawae be firmly set, never to be removed again.

### **Bishop Museum**

Mr. William Brown stated that the Kalaina Wawae are on Molokai at Mo'omomi Beach, exactly where Hui Malama I Na Kupuna O Hawai'i Nei wanted them to be placed, through an arrangement with Mr. Poepoe who was caring for the Kalaina Wawae. The Bishop Museum has funding to ensure educational programs regarding the Kalaina Wawae. The Bishop Museum intends for the Kalaina Wawae to remain in place, and only insisted on the removal clause in the agreement to protect the stones if they were threatened. The island has clearly embraced the stones and is caring for them.

Historically, King Kamehameha V owned Molokai and transferred title to portions of Molokai, including Mo'omomi, to Charles Reed Bishop in 1875, who transferred title to his wife, Bernice Pauahi Bishop. In 1897, the land was sold to Molokai Ranch. In 1909, sections of the stone were sent to the Bishop Museum for safekeeping, following extensive damage by grazing animals. Hui Malama I Na Kupuna O Hawai'i Nei submitted a repatriation request for the Kalaina Wawae. In 1999, a notice was published in the Federal Register that the Bishop Museum intended to repatriate the stones as an object of cultural patrimony. However, the Bishop Museum subsequently reviewed the proposal and determined that although the stones are an important part of the history of Hawaii and Molokai, they do not qualify as cultural patrimony under NAGPRA. In addition, the Bishop Museum determined that it would have right of possession if the object were an object of cultural patrimony. On November 3, 2003, a Federal Register notice was published rescinding the 1999 notice.

Mr. Charman Akina stated that although this generation of Molokai residents was dedicated to protecting the Kalaina Wawae, there was no guarantee for future generations. The Bishop Museum was dedicated to preserve the Kalaina Wawae, through a long and ongoing stewardship.

Ms. Isabella Abbott stated the Kalaina Wawae is in a beautiful site and she would be among the first to wish it a long life at that location. However, it has been returned and the notion that the Bishop Museum is against its return needs to stop.

### **Review Committee Questions**

Mr. Bailey suggested that maybe there was a way to put the Kalaina Wawae in trust for the people of Molokai. Mr. Brown stated that the Bishop Museum, whose board of directors is one-third Hawaiian and whose chairman is Native Hawaiian, was dedicated to preserving the Kalaina Wawae. The Bishop Museum is an institution of stewardship created by the Hawaiian royalty for just that purpose. Mr. Monroe asked what the Bishop Museum

understood its role and mission to be in terms of Native Hawaiian culture. Mr. Brown stated that the mission of the Bishop Museum is to advance and to keep alive Native Hawaiian culture, through preservation, study, and public programs.

Mr. Steponaitis asked for a response by Hui Malama I Na Kupuna O Hawai'i Nei regarding the Bishop Museum's assertion that *ali'i* had the authority to alienate possessions, such as the Kalaina Wawae. Mr. Ayau stated that the Kalaina Wawae is so centrally important to the people of Molokai with such historical and traditional importance that the issue of right of possession is not relevant because the object could not be alienated. Ms. Ayau-Pescaia stated that King Kamehameha V may have transferred ownership of the land, but even he must have understood that there were certain things that belonged to everyone. Ms. Ayau-Pescaia stated that the people of Molokai have preserved their Hawaiian culture by living it and passing it along through the generations.

Ms. Worl asked why the Bishop Museum changed the original agreement. Mr. Brown stated that the board of directors decided not to include Hui Malama I Na Kupuna O Hawai'i Nei in the agreement and to work only with Hui Malama 'o Mo'omomi, in part due to the situation involving the items from Kawaihae Cave. Mr. Monroe commended the Bishop Museum for taking a broader view of their responsibility to study, protect, interpret, and preserve these objects and suggested that perhaps a renewed effort in a spirit of conviction and good faith could resolve this matter outside of the technical requirements of the situation. Ms. Worl asked about the agreement that was signed under protest. Mr. Ayau stated that after thinking for three months that an agreement had been reached, the agreement had been changed. The main issue of concern was the removal of the provision that consent would have to be obtained from all parties before the Kalaina Wawae could be removed from Mo'omomi. Mr. Ayau stated he was glad the Bishop Museum said they have no intention of removing the Kalaina Wawae, but they could change their mind.

#### **Public Comment**

Ms. Keola Awong stated that she was speaking as a Hawaiian and would respectfully defer this issue to the families of Molokai.

Mr. Halona Kaopu'iki stated that the Kalaina Wawae needs to stay on the island of Molokai. Mr. Kaopu'iki stated he was the voice for the Molokai warriors. The Kalaina Wawae has been returned and the ceremonies completed. Mr. Kaopu'iki described how the people of Molokai will care for the Kalaina Wawae and stated that the warriors of Molokai will do anything to protect Kalaina Wawae. Mr. Kaopu'iki again urged the Review Committee to protect the Kalaina Wawae.

Ms. Hana Matthews stated that Mr. Brown of the Bishop Museum stated in his presentation that King Kamehameha V sold the island of Molokai to Charles Reed Bishop in 1875. Ms. Matthews clarified that King Kamehameha V died in 1872. Ms. Matthews stated that Ruth Kaeokolani received half of the land and gave it to Bernice Pauahi Bishop.

Mr. Charles Maxwell stated that he was present at the return of the Kalaina Wawae. During his presentation, Mr. Brown stated that Mr. Mac Poepoe was happy with the status of this situation. Mr. Maxwell stated that Mr. Poepoe was on the film presented by Hui Malama I Na Kupuna O Hawai'i Nei and described his feeling about the situation at that time.

Ms. Hannah Reeves stated that the United States government has taken much from the Hawaiian people. Ms. Reeves stated that she has the power to protect her people, both dead and alive. Ms. Reeves asked the United States government to stop the destruction.

#### **Review Committee Questions**

Mr. Steponaitis asked if NAGPRA defines when title passes during repatriation. Ms. Mattix stated that NAGPRA does not specifically state when title passes. Ms. Mattix stated that a number of factors can affect the timeline and the entire process needs to be considered. Mr. Steponaitis stated that in some instances property transfer falls under state law. Ms. Mattix stated that state law would have to be one consideration when trying to determine at which point the property transfers. Mr. Bailey asked if institutions are required to formally reject claims. Ms. Mattix stated that the regulations require that institutions consider claims within the 90-day period after the claim is received;

however, the law does not require formal notification for claims that are rejected. Mr. McKeown stated that if a claim is made and is determined to be a valid claim by the institution, then repatriation must take place within 90 days of receipt of the claim. Mr. McKeown stated that it would be incumbent upon the institution to notify the claiming party of any claim rejections. The administrative record of the institution would need to show that they considered the claim and came to a decision.

Ms. Metcalf asked how many times an institution can change a notice. Ms. Hutt stated that the notice belongs to the institution, and the institution could change its mind and amend the notice. The National NAGPRA Program publishes the notices and any amended notices. Mr. Steponaitis stated that in his experience parties to a repatriation view the transfer as the affirmative act taken by the museum and/or other involved parties. Mr. Steponaitis stated that the parties involved see the transfer as something that has to happen as a distinct step and not something that is assumed to happen after 90 days.

Mr. Bailey asked what was the purpose of a Notice of Intent to Repatriate. Mr. McKeown stated that three types of notices are required in the regulations: 1) Notice of Inventory Completion; 2) Notice of Intent to Repatriate; and 3) Notice of Intended Disposition. Notices of Inventory Completion were published by a museum or Federal agency at the completion of the inventory process, and included the listing of all human remains and associated funerary objects and a decision by the institution as to which Indian tribes or Native Hawaiian organizations are culturally affiliated. Notices of Intent to Repatriate were published by a museum or Federal agency in responses to claims for unassociated funerary objects, sacred objects, or objects of cultural patrimony by a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization. Notices of Intended Disposition were published by Federal agencies regarding the ownership of Native American cultural items excavated or removed from Federal or tribal lands. Mr. McKeown stated that each of the notices represent a final administrative action, though the museum or Federal agency could subsequently revise its decision. Ms. Mattix stated that if material facts arise after publication of the notice that somehow affected a museum or Federal agency's decision, she would counsel that that decision be revisited to take the facts into account.

Ms. Worl asked when Indian tribes or Native Hawaiian organizations can consider a repatriation to be final, if institutions can change their Notices of Intent to Repatriate. Ms. Hutt stated that the critical aspect of a notice is that once published it gives notice to all comers that if they feel they have a claim there is a 30-day window for them to act. On the 31<sup>st</sup> day, the transfer may occur. Typically, consultation after the claim is submitted centers around the process of effectuating the transfer, such as potential ceremonies and the physical aspects of the transfer. Ms. Hutt stated that under the law the Notice of Inventory Completion is not a determination by the institution of which claimant identified in the notice would receive the human remains or associated funerary objects. Mr. Steponaitis stated that in his experience with the NAGPRA process, 99 percent of the time the process works very, very well. Mr. Steponaitis stated that in some instances repatriation does not occur on the 31<sup>st</sup> day because the culturally affiliated tribe wishes to leave the objects in the care of the institution. Ms. Hutt stated that in those situations the ownership may transfer on the 31<sup>st</sup> day. The Indian tribe or Native Hawaiian organization then controls the disposition of that item and may choose to have the objects remain at the institution for curation purposes. Ms. Mattix stated it would be prudent for the institution to have paperwork reflecting the type of agreements described by Ms. Hutt. Ms. Hutt agreed and stated that although they are not required under the law, curation agreements result in finality for the process. Mr. McKeown stated that during the drafting of the regulations, consideration was given to requiring this type of documentation but it was eventually omitted from the regulations since rules governing such transfers are largely defined by state and/or other relevant laws.

Mr. Bailey cautioned against rushing Indian tribes into making hasty decisions and asked if the law had any deadlines for when repatriation had to be finalized following notice publication. Ms. Hutt and Ms. Mattix stated that the law does not have a time limit. Ms. Hutt stated that open-ended repatriations would have the potential for the institution to modify its notice if other factors arise. Ms. Metcalf described a successful arrangement between Native Alaskans and the University of Alaska Museum in Fairbanks for temporary curation of objects until reburial can occur or appropriate repositories are available. Ms. Worl stated that in Southeast Alaska the groups move quickly to obtain the items or perfect title, often through the use of a formal memorandum of agreement.

Mr. Steponaitis asked for an explanation of the roles of the National NAGPRA office and the Office of the Solicitor. Ms. Mattix stated that the Solicitor's Office provides legal advice, including interpretation of the law, to program areas, in this instance the National NAGPRA Office and the Review Committee. Ms. Worl asked if the Solicitor's Office extends the advice to parks. Ms. Mattix stated that the Solicitor's Office is one office under the Office of the

Secretary. The Solicitor's Office is broken into divisions that have client bureaus. Ms. Mattix is in the division that provides counsel to the NPS, as well as the National NAGPRA Office and the Review Committee. Ms. Mattix works on almost all NAGPRA issues for the NPS, although occasionally other Solicitor's Office attorneys work on NAGPRA issues at field or regional offices. This type of crossover is inherent in DOI, because the DOI wears a number of hats and the Solicitor's Office has to provide advice to all of the various bureaus. Solicitor's Office attorney, Ms. Fondren, represents Hawaii Volcanoes National Park, an issue that Ms. Mattix has not worked on.

Mr. Monroe asked about potential conflict of interest. Ms. Mattix stated that there is no conflict of interest because ultimately the Secretary of Interior oversees all bureaus. If an issue between two bureaus cannot be resolved, ultimately Solicitor Wooldridge will make a decision about the issue and advise the Secretary. Ms. Mattix stated that the DOI talks about separation of functions rather than conflict of interest. The Solicitor's Office General Law Division, which deals with issues of administrative law and departmental delegation and function, said there is no conflict of interest in this situation. Mr. Monroe asked Ms. Mattix for a written summary of how the functions are separated to provide representation to various parts of the NPS, in order to provide sound legal counsel to all parties. Mr. Monroe asked about the Solicitor's Office opinion that the Review Committee members received from Hawaii Volcanoes National Park. Ms. Mattix stated that report was authored by Ms. Karen Mudar of the National NAGPRA Program, and was not a Solicitor's Office opinion.

### **Review Committee Final Discussion**

Ms. Worl stated that she understood the concern of the Native Hawaiians from Molokai that they do not want the Kalaina Wawae to leave Molokai without their consent, which was the clause removed from the MOA. She suggested that the Review Committee recommend that the Bishop Museum work with Hui Malama 'o Mo'omomi to see if they could reach agreement about reinserting that language. Mr. Steponaitis stated he was in favor of a recommendation encouraging the parties to work it out. On the subject of cultural patrimony, Mr. Steponaitis stated that is a very difficult determination to make in this case. Mr. Steponaitis suggested including the same language as in the previous recommendation regarding NAGPRA requirements for museums to repatriate within 90 days and that repatriation is not automatic. Ms. Mattix stated that there are two possible tracks in this dispute; 1) the return of the objects through an MOA that would be outside of NAGPRA requirements, and 2) proceeding with the claim through NAGPRA that the Kalaina Wawae are cultural patrimony. The Review Committee members agreed to recommend that the Bishop Museum and Hui Malama 'o Mo'omomi work together to revise the MOA to require the consent of Hui Malama 'o Mo'omomi prior to the removal of the Kalaina Wawae from Molokai.

Mr. McKeown stated that the issue that has been brought before the Review Committee in this dispute is whether or not the Kalaina Wawae are objects of cultural patrimony. If they are objects of cultural patrimony and the request has come from a Native Hawaiian organization that can show cultural affiliation and meets all other NAGPRA requirements, then the museum is required to transfer control. Once control is transferred, the Native Hawaiian organization(s) is free to handle disposition without input from the museum. If they are not cultural patrimony, the museum is free to have agreements regarding where the object will be placed and who would have responsibility, but the control would remain with the museum. The Review Committee needs to speak to the issue of cultural patrimony, even if just to state that the Review Committee cannot or does not wish to resolve the issue.

The Review Committee members agreed that there was disagreement among the parties and Native Hawaiians speaking at the meeting as to whether the Kalaina Wawae are cultural patrimony. The Review Committee members agreed to include as a finding that the Review Committee will not make a determination at this point regarding whether the Kalaina Wawae are objects of cultural patrimony. Ms. Worl suggested including wording in the findings that the Review Committee recognizes the cultural significance of the Kalaina Wawae to the people of Molokai. Mr. Monroe suggested adding that the Review Committee supports the opinion that the Kalaina Wawae are located where they belong on Molokai. The Review Committee members agreed to those two suggestions for findings. Mr. Monroe stated for the record that if the recommendation is not fulfilled, the Review Committee is not precluding resubmission of this issue to the Review Committee under NAGPRA. Mr. McKeown stated that a Federal Register notice would be published with the Review Committee's findings and recommendations regarding this dispute.

## **Dispute Between Hui Malama I Na Kupuna O Hawai'i Nei and Hawaii Volcanoes National Park Regarding Items from a Cave at Kawaihae**

Mr. McKeown explained that the dispute was submitted by Hui Malama I Na Kupuna O Hawai'i Nei on November 23, 2004 and that additional documentation was provided by Hui Malama and Hawaii Volcanoes National Park. Letters inviting other affected parties to participate in the hearing were sent to representatives of Henry Auwae (deceased), Hannah Kane Reeves, Na Papa Kanaka O Pu'u Koholo, Na Ali'i Lei Kawananakoa, Royal Hawaiian Academy of Traditional Arts, Van Horn Diamond Ohana, Hawaii Island Burial Council, Department of Hawaiian Home Lands, and Office of Hawaiian Affairs. This dispute was chaired by Mr. Monroe.

### **Hawaii Volcanoes National Park**

Ms. Cynthia Orlando, superintendent of Hawaii Volcanoes National Park since March 2004, introduced Ms. Laura Carter-Schuster, cultural resource program manager, and Ms. Kaola Awong, Native Hawaiian cultural liaison. Ms. Orlando referenced two documents, available to the Review Committee members and the public, a summary of the administrative record related to cultural items from Forbes Cave in the park's collection and a matrix of communications and responses relative to the Forbes Cave items. Since 1995, when consultation first began, every effort was made to be inclusive and to give all members of the Native Hawaiian community an opportunity to respond. By early 2001, participation increased as many potential claimants came to understand and exercise their right to fully participate in the NAGPRA process. As responses became more diverse and more detailed, the park recognized the need to research the collection and contracted for a report to document how the Forbes Cave items may have functioned in the past and how they may be valued by contemporary Native Hawaiian organizations and individuals. A partial draft of the report, known as the Rose report, was provided to the Review Committee members. On March 1, 2005, copies of the draft Rose report were mailed to all potential claimants. The parties were asked for their opinion as to whether any or all of the items are subject to NAGPRA and their opinion of the potential classification of the objects into categories. The parties were also asked to provide evidence to support claims of cultural affiliation to the items as either a Native Hawaiian organization or through lineal association. Responses were due 60 days from the date of the letter. Following receipt of the information, the park proposes to convene a meeting of all claimants and potential claimants to discuss the issue. At that time, the park would hope to make a determination and present it to the Review Committee for further advice. In conclusion, the park has not determined any delineated cultural affiliations or specific categories of the objects.

### **Hui Malama I Na Kupuna O Hawai'i Nei**

Mr. Edward Halealoha Ayau stated that the dispute involves the classification of five cultural items as unassociated funerary objects as defined by NAGPRA. The five items were from an *ali'i* burial cave in Honokoa Gulch, now known as Forbes Cave, and later donated to Hawaii Volcanoes National Park by Mrs. Harry Forbes Edmondson in 1956. The cultural items include a *ki'i la'au* (carved wood figure) of a woman, a *konane* (an ancient game) board made of wood with carved figures at the base, a cutting tool made of a human clavicle and a shark tooth, an *ipu* or gourd with cord and shell stopper, and a *kupe'e* (bracelet) made from rock oyster shell. Hawaii Volcanoes National Park submitted a NAGPRA inventory dated June 28, 1996, which listed one of the five items, a cutting tool made from a human clavicle. In July 1996, Hawaii Volcanoes National Park produced a report titled "Hawaii Parks NAGPRA Cultural Affiliation Project Draft Final Report," by June Noelani Cleghorn, which included a list of NAGPRA related items including 53 cultural items, 5 of which originated from Forbes Cave. The report identifies the cutting tool as being in the NAGPRA category of human remains since it specifically identified human bone that was crafted into a tool. Due to the paucity of archaeological data accompanying the items, the Hawaii Volcanoes National Park felt it appropriate for the Native Hawaiian organizations to define the NAGPRA category for each of the four remaining items from Forbes Cave.

Hui Malama defined the five cultural items from Forbes Cave as funerary objects on three occasions by submitting reports with evidence, documents, and arguments supporting the assertion. The same information was submitted to the Bishop Museum in order to establish that the cultural items from Forbes Cave held by the Bishop Museum were also funerary objects. The submissions were a letter dated November 19, 1999 to Mr. Bryan Harry, a letter and revised report dated November 29, 1999 to Mr. Bryan Harry, and a hand-delivered letter and revised report dated January 9, 2001 to Mr. John Robbins, then National NAGPRA Program Leader. Hawaii Volcanoes National Park has yet to respond directly to the evidence and arguments submitted by Hui Malama. Hui Malama learned indirectly through a March 5, 2004 letter from Mr. Bryan Harry, NPS Pacific Area Director, to Mr. William Brown of the

Bishop Museum, that the evidence submitted by Hui Malama was considered insufficient to make a determination. On November 23, 2004, Hui Malama filed this dispute seeking the Review Committee's assistance to resolve the issue of whether the five objects from Forbes Cave qualify as unassociated funerary objects under NAGPRA.

Mr. Ty Kawika Tengan, assistant professor of ethnic studies and anthropology at the University of Hawaii, stated he participated in various repatriation and reburial activities between 1995 and 2001 on Maui and Oahu, and since 2001 has researched, taught, lectured and moderated panels on burial practices. Mr. Tengan stated that the plan and sketch of the cave by Mr. David Forbes reveal that all objects in chamber C are in close physical proximity to numerous burial bundles, satisfying the NAGPRA criteria of objects being placed with or near individual human remains. Mr. Tengan referenced articles on burial practices from Hawaiian language newspapers in the 1800s that state that if the dead had any possessions, the possessions would be buried with the individual. This is clear evidence that objects were placed as part of a death rite or ceremony of a culture. In responding to the argument that possessions of *ali'i* would not be deposited with *ali'i* burials since they might identify said burials, Mr. Tengan referenced Mr. Samuel M. Kamakau, a Hawaiian historian, who describes a variety of traditions from different islands and notes the occurrence of funerary objects with *ali'i* burials. Again referencing Mr. Kamakau, Mr. Tengan addressed the question of the nature of the images as funerary objects and stated that it is the presence of the deities in the burial caves that ensures that the burials are in the care of the gods. In the aforementioned sketch of the Forbes Cave, the images of the gods are placed in front of the burials in a way that suggests they are protectors of the cave. In light of the preponderance of the evidence submitted, Mr. Tengan urged the Review Committee and Hawaiian Volcanoes National Park to classify the items as funerary.

Ms. Kehaunani Abad, Native Hawaiian and archaeologist, stated she was raised in a Hawaiian household that was engaged in learning about, caring for, and documenting ancestral sites. Much of her cultural understanding and sense of responsibility to speak on this issue comes from that experience. Her archaeological and formal Hawaiian studies training and research has focused on *ali'i*, *heiau* (place of worship), and burial sites. The pivotal question in this issue appears to be whether the items were placed in the cave due to their relationship with the individuals interred in the cave or whether this was a coincidence of two different groups using the cave for unrelated purposes. One argument in support of the coincidence theory is that the items were secreted away when the *kapu* system was abolished in 1819 to save the items from destruction. Yet only one of the five items in question, the *ki'i aumakua* (deity figures) would have faced such a threat. If individuals placed the items in the cave to preserve them for future use, why were the items placed in such close proximity to the human remains rather than being placed in the hands of caring family members or formal institutions to curate such objects? The argument that possessions were distanced from burials ignores the well-documented fact that *ali'i* were most definitely buried with items that would be recognizable as those belonging to and being used by the *ali'i*. Ms. Abad stated that Hawaiian notions of sacred spaces related to burials involve the concept of a central sacred focal point exuding *mana* (divine power) that creates a wide zone of *kapu* space, for example, the *mana* emanating from the *iwi* in a burial cave would define the entire cave as a burial. A more plausible scenario is that the objects in question were the *moepu* of one or more of the individuals interred in the cave. These are not random objects, but are objects that would have been the highly personal possessions of someone of chiefly rank. These objects do not belong to Hawaii Volcanoes National Park or to the people of Hawaii. These objects are *moepu* that, following Hawaiian cultural values, the dictates of NAGPRA, and the rules of common decency, should return to their rightful owners.

### **Review Committee Questions**

Mr. Bailey asked if the objects were consistent with objects found in other cave burials. Ms. Abad cited specific cave burials that contained similar objects to those found at Forbes Cave. Mr. Steponaitis asked for clarification about the classification of the items. Mr. Ayau stated that Hui Malama would like the five objects to be classified as unassociated funerary objects, including the cutting tool made from the human clavicle. If the cutting tool is not classified as an unassociated funerary object, Hui Malama would like it to be identified as human remains. Mr. Steponaitis asked Hawaii Volcanoes National Park for an estimate of the time line for making the classification decision. Ms. Orlando stated that a reasonable time frame would be by the end of the current year. Ms. Carter-Schuster explained the difficulty of estimating such a time line, given the numerous individuals and organizations involved in the process.

Mr. Monroe expressed appreciation for the thorough consultation process and asked for clarification on its lengthy nature. Ms. Orlando stated that the process was complicated as more Native Hawaiian individuals and organizations became involved and Hawaii Volcanoes National Park was fulfilling their responsibility to consult with all parties.

Ms. Orlando assured the Review Committee that there would be timely responses to any requests. Ms. Awong stated that consultation in Hawaii is further complicated because Hawaiian organizations do not have tribal leaders, so the most effective process is by community outreach. Mr. Ayau stated that part of what Hui Malama is seeking is a direct response to the information they submitted. Ms. Orlando acknowledged that Hui Malama did not get a personal response to their submissions, but was included in collective responses to a number of claimants. Ms. Orlando stated that Hui Malama would receive a response.

Mr. Steponaitis asked for information regarding Mr. Roger Rose, who authored the Rose report. Ms. Carter-Schuster stated that Mr. Rose has a background in anthropology and previously served as curator of the Forbes Cave collection at the Bishop Museum for nearly 28 years. Mr. Steponaitis asked whether the burial patterns described by Ms. Abad were for a specific island or more extensive. Ms. Abad stated that the examples she cited were very close geographically to the site in question. Mr. Steponaitis asked about the temporal aspects of the objects within the cave. Ms. Abad stated that the objects represented an extremely tight assemblage in time and cited specific evidence regarding the burial practices utilized in the cave. Ms. Orlando stated that the cave has been very disturbed from 1905 forward in time. While some items represent a tight time range, others do not.

Regarding the Rose report, Mr. Monroe recommended participation by a broader range of experts in the report, as there is a heavy loading of experts that are not from the Native Hawaiian community. Mr. Monroe stated that he found it strange that the report ends with an analogy between removing human remains and funerary objects from a cave and salvaging things from a shipwreck. Some consideration should be given to the fact that clearly those who were involved in this process thought it was illegal, which was frequently documented. Mr. Monroe added that there is considerable latitude for more direct consultation, and suggested that when acquiring information, to do so from a broader base of individuals.

Mr. Monroe asked about the report on the status of public lands in Hawaii dated August 6, 2002, and asked why it was not available before the meeting. Ms. Orlando stated that the Review Committee members were provided copies before the meeting and she brought copies to the meeting for the public. Mr. Monroe asked if the information has long been available and accessible. Ms. Orlando confirmed that it has. Mr. Monroe asked for Hawaii Volcanoes National Park's legal position on the documented fact that the discoverers of the objects knew what they were doing was illegal. Ms. Kimberly Fondren, Office of the Solicitor counsel for this issue, stated that she was recently assigned this issue and was currently working to familiarize herself to the facts, as well as clean up the administrative record. Mr. Monroe stated that barring unknown factors, one could make a case that Hawaii Volcanoes National Park has no right of possession whatsoever as the objects were not legally acquired. Mr. Monroe expressed appreciation for Ms. Fondran's candor and understood she would consider this issue.

### **Affected Parties**

Mr. Van Horn Diamond, Van Horn Diamond Ohana, stated that the Van Horn Diamond Ohana is a Native Hawaiian organization that was determined to be culturally affiliated with the 83 Kawaihae (Forbes Cave) items in 2000. Mr. Diamond stated the following on behalf of the Van Horn Diamond Ohana: 1 ) the Diamond Ohana speaks only for itself; 2) no entity or person is able to speak for all Hawaiians in this matter; 3) the Diamond Ohana does not accept any person's *mana'o* (thought) to be infallible and/or speaking from ex cathedra; 4) the repatriation and reinterment of *iwi kupuna* (ancestral remains) is properly a familial responsibility, and the repatriation of artifacts not directly associated to *iwi kupuna* does not necessarily require their reinterment; and 5) when *ohana* (family) is involved in the repatriation and/or reinterment process, non-*ohana* Native Hawaiian organizations should defer to, respect, and support the *kuleana* of the recognized *ohana*.

The Van Horn Diamond recommends the following: 1) improved communications occur between the disputants; 2) enable Hawaii Volcanoes National Park to proceed to implement its initiative so consultation will occur both individually and collectively for all claimants, including inspection of the items; 3) the consultation process must fully conform to the Review Committee's 2000 determination, to include one-on-one consultation as well as global consultation with each claimant for each item, and all claimants will be expected to demonstrate cultural affiliation to each item; 4) the relief Hui Malama seeks beyond improving the communication needs to be tabled.

The Van Horn Diamond Ohana believes: 1) Hawaii Volcanoes National Park has a definitive, progressive approach leading to appropriate repatriation; 2) the improved culturally sensitive communication should help enhance the

determination of each item's classification; and 3) the repatriation of these items should be decided on its own merit, with the integrity of the decision-making process being transparent.

Mr. Steponaitis expressed appreciation for Mr. Diamond's willingness to forego his statement during the Review Committee's November teleconference and instead submit a written statement, which was included in the Review Committee's binders. Mr. Bailey asked if the Van Horn Diamond Ohana had a direct relationship to the Island of Hawaii. Mr. Diamond stated that the Van Horn Diamond Ohana has genealogical ties to Kohala, as well as Honokua Coast. Mr. Monroe asked Mr. Diamond to describe the nature of the consultation process between the Diamond Ohana and Hawaii Volcanoes National Park since 1995. Mr. Diamond stated that the limited interactions with Hawaii Volcanoes National Park where his family members visited some items were okay and open.

Mr. Micah Kane, Hawaiian Homes Commission, stated that the Hawaiian Homes Commission meets the criteria of a Native Hawaiian organization. The Hawaiian Homes Commission was established by an Act of Congress in 1921. Congress set aside more than 200,000 acres of land for the purpose of rehabilitating Hawaiians through land stewardship, home ownership, agriculture and pastoral opportunities. The Hawaiian Homes Commission manages more than 7,500 residential, pastoral, and agricultural leases through the state of Hawaii, including 600 land dispositions similar to the land that contains Kawaihae Caves. With regard to the objects at Volcanoes National Park under discussion at the meeting, the Hawaiian Homes Commission believe that those objects are funerary and would give authorization to access the Kawaihae Caves for the repatriation process to be complete.

Mr. Lance Foster presented testimony on behalf of OHA. With regard to the matter of the Kawaihae burial cave artifacts, OHA is a recognized claimant and co-owner in Western law, but would prefer to be viewed as a *kahu* (guardian) with a shared *kuleana* with other recognized individuals and organizations. OHA seeks to exercise its *kuleana* and represent its diverse beneficiaries' interest in the most appropriate manner. OHA commended the NPS for researching background information pertaining to Kawaihae in general, with a specific focus on Honokoa Gulch, as synthesized by Mr. Roger Rose. The Rose report, currently in draft form, should strive to be as complete as possible to lend integrity to the discussion. Notwithstanding the wide variety of burial methods and practices across Hawaii and the changes that have occurred in the span of 1,000 years, modern archaeological evidence provides insight into at least some practices. Mr. Foster gave several examples. Mr. Foster stated that the Rose report should strive to include all available references to Hawaiian burial practices and include a discussion of them. Mr. Foster stated that plundering of Native Hawaiian burial caves will continue into the future, with caves becoming known throughout the world. Security of the caves is unclear. Mr. Foster stated that while discussion of these items occurred, four *kupuna* involved in this situation have passed on and taken their '*ike* (perception) and *mana*'o (thoughts). How many more will pass before solutions are found? Mr. Foster stated that when focusing on restoring the *kino* (body), one cannot forget that the *uhane* (spirit) must be healed as well.

Mr. Steponaitis asked about Mr. Foster's statement that the nature of the carved wood figures was not clear. Mr. Foster explained that written records have limitations and are often from people of other cultures, which should be considered. Mr. Bailey asked about OHA's election process. Mr. Foster stated that the process was recently changed to allow for election by the Hawaiian public as a whole. OHA, despite changes in recent years, is the most disinterested party at this time. OHA is mandated to advocate for the betterment and advancement of all Hawaiians.

Ms. Amelia Ko'olei Gora, Hawaiian Genealogy Society, stated that through genealogy a number of Hawaiians have been identified as being of Kamehameha lines. Royal families exist today. Ms. Gora commented on OHA's statements regarding the word "Hawaiian" because there are many interpretations of who is Hawaiian. Ms. Gora gave examples of many historical events. Ms. Gora also described the wrongful treatment of Hawaiians, including Queen Liliokalani. Ms. Gora stated that in 1894 Charles Reed Bishop deeded his life interest to the Bishop Estates, which is where the *pilikia* (problem) is coming from, and that interest ended when Charles Reed Bishop died. Ms. Gora stated that she has a list of all *ali'i* that do have rightful claims, developed through the Genealogy Society.

Mr. Melvin Lono Kaiolohia Kalahiki, *ali'i* nui on the Council of Chiefs of Na Papa Kanaka o Pu'ukohola Heiau, thanked the Review Committee for meeting in Hawaii. Mr. Kalahiki described his family's deep connections in Hawaii. They were given lenient status by the Hawaii Burial Council on July 20, 2000. Mr. Kalahiki visited Hawaii Volcanoes National Park to examine the artifacts, along with several others. After lengthy examination, they determined that the items were cultural objects and should not be returned to Honokoa Cave, but instead should be kept in a depository for future generations to see and appreciate. These objects were intended for use, and Mr. Kalahiki recommended that the Review Committee classify the objects as cultural patrimony. Mr. Kalahiki

stated some people believe all of these artifacts are funerary objects, but this assumption is not necessarily true. Mr. Kalahiki stated that they believe *iwi* must be returned to its rightful burial place. After the death of King Kamehameha, artifacts of value were placed in a cave at Honokoa Gulch for safekeeping. August 17, 1991 commemorated the bicentennial of the dedication of Na Papa Kanaka o Pu'ukohola Heiau, which united the descendents of Kamehameha and Keoua Ku'ahu'ula of Ka'u. The rededication of Pu'ukohola inspired a spirit of cooperation and unification. All elements of the organization provide an opportunity for the new generations of Hawaiians to learn, understand, appreciate, preserve and advocate their cultural heritage. Mr. Kalahiki stated they endeavor to develop ways to ensure the integrity and dignity of *kupuna* and to establish a priority for long-range objectives. In closing, Mr. Kalahiki encouraged the Review Committee to recall the loan made by the Bishop Museum and suggested the artifacts be returned to Bishop Museum for inventory and be kept at the Bishop Museum until the issue is settled among the claimants.

Ms. Hannah Reeves stated her ancestors were buried in the cave and she claims every item that belonged in the cave. Her family goes back to King Kamehameha I. This is a very, very strong cave. Ms. Reeves stated it was important to know all the evils to be brought back and every artifact that was taken. Ms. Reeves stated that her people honor and respect their *iwi* and have much *mana*. Ms. Reeves stated her greatest desire was bringing her people back. This is a very sacred thing. Ms. Reeves stated the Department of the Interior and the United States have no authority over the ancestors that are buried on the island and she holds them responsible for damage.

### **Review Committee Final Discussion**

After discussion, the Review Committee members unanimously agreed to the following recommendations: 1) that Hawaii Volcanoes National Park initiate aggressive consultation with all claimants and other interested parties; 2) that the park investigate the right of possession issue in light of applicable laws in place at the time the objects were removed from the cave; and 3) that the park take steps to ensure that it completes the repatriation process by the end of 2005. The Review Committee members agreed to include the following points raised during their discussions as findings in this dispute: 1) the park has been very slow in going through the NAGPRA process; 2) the number of potential claimants has increased over time; 3) the Review Committee is encouraged that the park is now moving forward; 4) the Review Committee has chosen not to come to a finding as to whether the five objects are cultural items as defined by the statute and regulations; 5) the park has not done sufficient work to investigate right of possession; and 6) the park needs to expand the involvement of Native Hawaiian participation and testimony. Mr. McKeown stated that a Federal Register notice would be published with the Review Committee's findings and recommendations regarding this dispute.

### **Reconsideration of a Matter Between The Royal Hawaiian Academy of Traditional Arts and Bishop Museum Regarding Items from a Cave at Kawaihae**

Mr. McKeown summarized the history of the issue. The issue was initially raised before the Review Committee in St. Paul, Minnesota, May 9-11, 2003. The dispute was brought by the Royal Hawaiian Academy of Traditional Arts and involved the Bishop Museum. The Review Committee issued a recommendation following that meeting that was published in the Federal Register on August 20, 2003. Subsequent to that publication, another organization that was involved in claiming the same objects submitted a request at the Washington, DC meeting, September 17-18 that the issue be reconsidered by the Review Committee. The Review Committee decided to hold in abeyance its initial findings and to reconsider the issue at a subsequent meeting to be held in Hawaii. The National NAGPRA Program requested information from several of the parties, including the Bishop Museum, Royal Hawaiian Academy of Traditional Arts, and Department of Hawaiian Home Lands. Responses were received from all three organizations. Letters inviting other affected parties to participate in the hearing were sent to the Department of Hawaiian Home Lands, Hawaii Island Burial Council, Hawaiian Genealogy Society, Kekumano Ohana, Keohokalole Ohana, Na Papa Kanaka O Pu'ukohola Heiau, Nation of Hawai'i, Native Hawaiian Advisory Council, Office of Hawaiian Affairs, Pu'u honua O Waimanalo, and Van Horn Diamond Ohana. This dispute was chaired by Ms. Metcalf.

### **Royal Hawaiian Academy of Traditional Arts**

Mr. La'akea Sukanuma stated the record speaks for itself regarding the academy's position on this dispute, but he would point out a few things for the Review Committee's consideration. Mr. Sukanuma stated that in response to the increasing number of claimants for the Kawaihae Cave items, Hui Malama I Na Kupuna O Hawai'i Nei borrowed the items with the cooperation of the Bishop Museum administration. The Bishop Museum employee, Ms. Betty

Tatar, who signed the loan agreement, had no authority and violated the Bishop Museum's long-standing loan procedure. When the loan was discovered by the media, the Bishop Museum's then director, Mr. Donald Duckworth, took no disciplinary action against Ms. Tatar, but the 21 employees who signed a petition protesting the loan were reprimanded and one suspended. A number of claimants were recognized and the majority was in favor of recalling the loan and recovering the items. When Hui Malama refused to return the items, the Bishop Museum told the claimants that it assumed full responsibility for the recovery. Mr. Sukanuma stated that a plan was developed wherein the Bishop Museum would assume full responsibility but really intended to claim completed repatriation. There were protests and angry claimants, but the situation soon quieted down. However, the Royal Hawaiian Academy of Traditional Arts did not go away, and eventually their request for review was accepted by the NAGPRA Review Committee and scheduled to be heard in May 2003 in St. Paul, Minnesota. At the meeting, Mr. William Brown, director of the Bishop Museum, stated he reviewed the situation and concluded that the repatriation did not properly take place. Review Committee members were in agreement and ruled in favor of the Royal Hawaiian Academy of Traditional Arts, except for Ms. Worl.

Mr. Sukanuma stated that then Hui Malama developed a plan that resulted in the recommendation being held in abeyance at the September 2004 meeting in Washington, DC. The Royal Hawaiian Academy of Traditional Arts sent three letters to the DFO, which were not received in time for distribution to the Review Committee members prior to the meeting. Hui Malama claimed that a procedural error occurred at the St. Paul meeting because the regulations allegedly require the presence and participation of all interested parties and also that completed repatriations cannot be reopened. Mr. Sukanuma stated that despite numerous requests, no error has ever been identified. During the Review Committee teleconference in November 2003, the Chair stated that the next meeting would be held in Hawaii to rehear the Kawaihae matter. During the teleconference, only Hui Malama, former director Donald Duckworth, and former museum NAGPRA representative Guy Kaulukukui were allowed to speak, each of who was involved in the initial loan. Written comments submitted by the Royal Hawaiian Academy of Traditional Arts took over three months to reach Review Committee members. Mr. Sukanuma stated that Hui Malama was seeking repatriation of numerous items before potential passage of the Akaka Bill, which will end Hui Malama's ability to assume ownership of artifacts. The Royal Hawaiian Academy of Traditional Arts' position is: 1) the rehearing of this dispute is predicated upon deceptive and false claims of a procedural error, and 2) the academy recommends and calls for a moratorium on all NAGPRA activity in Hawaii until such time as self-governance is effected and repatriations are done in the same manner as with Native Americans and Native Alaskans. Mr. Sukanuma cautioned the Review Committee against discussing cultural issues of which they have little familiarity.

### **Bishop Museum**

Mr. William Brown stated the dispute concerns the status of 83 lots of items removed from the Kawaihae Caves complex in 1905 and subsequently placed in the collections of the Bishop Museum. Multiple Native Hawaiian organizations made claims to the items under NAGPRA. After consultation with the claimants, the Bishop Museum accepted that the items were funerary and proposed to repatriate them to the claimants collectively. On February 26, 2000, the Bishop Museum loaned the items to Hui Malama, who told the Bishop Museum that the other claimants had agreed that Hui Malama would hold the items until consultation was complete. The loan agreement was signed by a representative of Hui Malama and required that the items be returned in one year or sooner if requested. Hui Malama representatives subsequently announced that the items had been placed in the Kawaihae Caves, and more recently announced that Hui Malama never intended to return the loan items. Other claimants protested the loan, stating that they had not agreed to it. On April 12, 2001, the president of the Bishop Museum sent a letter to the 13 claimants at that time stating that the repatriation of the items was complete and title to the items transferred to the claimants. The Royal Hawaiian Academy of Traditional Arts, one of the 13 claimants, filed a dispute with the Review Committee. The Royal Hawaiian Academy of Traditional Arts' position was that the Bishop Museum was obligated to recover the items from Kawaihae Caves and to continue consultation in an equitable manner. Upon review of the issue at that time, Mr. Brown stated he concluded that, despite good faith and best intentions, the representations in the April 12, 2001 letter were invalid because of the flawed process.

The Review Committee issued a recommendation following the May 2003 meeting that was published in the Federal Register on August 20, 2003. The Bishop Museum concurred with the Review Committee's findings and recommendations and does not believe that the Review Committee should revisit them. The Bishop Museum requested that Hui Malama return the loaned items and requested that the Department of Hawaiian Home Lands allow access to allow recovery of the items. The items have not been returned as of the Honolulu meeting. The Bishop Museum's only objective was to reset the process so that the consultation may be continued without

prejudice to the interest of any of the claimants. The Bishop Museum will respect any decisions made by the claimants. Mr. Brown stated that Mr. McKeown sent a letter to the Bishop Museum dated December 2, 2004, suggesting that the Bishop Museum initiate litigation in a court of competent jurisdiction to resolve the matter. Mr. Brown stated that he understood the reason for the suggestion but assured the Review Committee that the Bishop Museum had no plans to initiate litigation on this matter at that time. The Bishop Museum hopes that cooperation will allow the matter to get back on track, and the museum does not wish to be adversarial to the claimants or the Department of Hawaiian Home Lands.

Ms. Isabella Abbott stated that the Bishop Museum had a consultation meeting with numerous invitees to discuss the items being placed in the Kawaihae Caves. Ms. Abbott expressed concern about the potential damage to the items from the extensive insect population of Hawaii. Ms. Abbott stated she would like to see the objects returned for their protection.

### **Hui Malama I Na Kupuna O Hawai'i Nei**

Mr. Edward Halealoha Ayau stated that Hui Malama testified on this issue at the September 2004 Review Committee meeting. Their position remains the same at the current time. Mr. Ayau provided additional testimony at the November 2004 Review Committee teleconference. Hui Malama believes that the appropriate forum for this issue is a court of competent jurisdiction, because the issue is one of the finality of the repatriation and outside of the Review Committee's scope. Mr. Ayau stated that Hui Malama made a commitment to address a very difficult problem and learn about the different instances in which their *kupuna* were disturbed in institutions and museums around the world. Hui Malama has undertaken the *kuleana* to try to make a situation right by bringing them home. Mr. Ayau stated that Hui Malama does not have exclusive say in these issues, but were committed and dedicated to this responsibility. Their efforts were done of a sincere hope and belief of trying to do right by the *kupuna* in keeping with the way they were raised. Hui Malama does not own anything, but just accepted a difficult *kuleana* that requires help and support.

Mr. Steponaitis asked about the loan agreement that was signed by a representative of Hui Malama. Mr. Ayau stated that the loan agreement was the vehicle chosen by the Bishop Museum to release the items to Hui Malama. The loan agreement was not of Hui Malama's choosing. The loan was to become moot once repatriation was declared, which was done in June 2000. Mr. Steponaitis stated that the commonly understood meaning of the word loan was that the items are subject to be returned. Mr. Ayau stated that was not always the case, as some museums loan items to other museums, which are then repatriated thus rendering the loan moot. Mr. Steponaitis asked if the loan had been recalled before execution of the repatriation would Hui Malama have returned the items, and Mr. Ayau stated that he would not. Mr. Monroe asked what was the purpose of the loan. Mr. Ayau stated that both Hui Malama's understanding and the Bishop Museum's understanding of the loan's purpose was to facilitate repatriation, and the agreement contained that specific understanding. Mr. Monroe asked if Hui Malama represented to the Bishop Museum that it had the concurrence of the other parties in seeking the loan. Mr. Ayau stated that Hui Malama believed they had the concurrence of the parties; the outstanding issue was security of the cave, which was inspected and believed to be securable. Mr. Monroe asked if Hui Malama intended to honor the language requiring return of the items in one year. Mr. Ayau stated they did not intend to return the items; Hui Malama's understanding was the loan was to facilitate repatriation and that the Bishop Museum did not intend for Hui Malama to return the items.

### **Affected Parties**

Mr. Micah Kane, Hawaiian Homes Commission, stated the Hawaiian Homes Commission is managed by a nine-member commission, appointed by the governor. Mr. Kane stated that the position he is articulating at the meeting is an eight/one position on behalf of the nine members. The position was that the cultural objects repatriated by the Bishop Museum are funerary objects for which the repatriation process was complete. The Hawaiian Homes Commission position has been consistent since 2000. At the present time, any requests to enter the caves would be denied or would be accepted and considered an intentional excavation under Section 3.

Mr. Bailey stated that it appeared the Hawaiian Homes Commission was actually acting as a judicial body in making their determination and overstepping their jurisdiction. Mr. Kane stated that the Hawaiian Homes Commission has taken a strong position that any argument to access the caves at this time does not warrant the breach of disrupting the cultural artifacts and the funerary objects in the cave, but would not be obstructionist to any court proceedings that require different actions. Ms. Worl asked about the relationship between Hawaiian Homes Commission and the

DOI for land oversight and trust relationships. Mr. Kane stated that the DOI needs to give authorization, with signature by the Secretary, to Hawaiian Homes Commission for any land exchange.

Mr. Lopaka Mansfield read a statement for Princess Kawananakoa of Na Lei Ali'i Kawananakoa. In their testimony, Hui Malama acknowledged that Forbes Cave is a repository of *ali'i* artifacts, both from the Bishop Museum and Hawaii Volcanoes National Park. The importance of the tie between *ali'i* and the artifacts of the Hawaiian people is essential to understanding who has rights under NAGPRA. The care of the *ali'i* and their property rests exclusively with the *ali'i*; the continued refusal to return the property of the *ali'i* to the rightful custodians demonstrates profound disrespect for the central beliefs of the Hawaiian people for thousands of years. Princess Kawananakoa detailed her *ali'i* genealogy specifically demonstrating lineage to the items from Molokai and Kawaihae. Notwithstanding the facts and Hawaii's history, it is evident that the Review Committee was inclined not to correct the illegal transfer of the Kawaihae collection to Hui Malama. The reason there is no recognized central authority for all Hawaiian artifacts is because the legitimate government of Hawaii was illegally overthrown. Liliuokalani trusted the United States government, and then she spent the rest of her life pleading for her people's rights. Once again, Hawaiians are pleading for what few rights they have left and are still facing the lack of understanding and concern for Hawaiian culture and history. Princess Kawananakoa expressed concern at the false and defamatory attacks made against the Bishop Museum and Mr. William Brown. Apart from serious lapses under the prior administration, the Bishop Museum must be recognized for its vigilance and integrity in preserving what is left of Hawaii's past. Princess Kawananakoa stated she has a royal obligation to seek justice and impose a moral responsibility. It is her wish that differences would be resolved at this meeting concerning the care of Hawaiian cultural artifacts for the benefit of future generations.

Mr. Van Horn Diamond read a statement for Mr. Cy Harris, of the Kekumano Ohana. Mr. Harris described the history of the Kekumano Ohana and their connection to Kawaihae Cave. The Kekumano Ohana's position was in support of its representative, Mr. La'akea Sukanuma and the Royal Hawaiian Academy of Traditional Arts, from the beginning of this issue up until the Review Committee's findings and recommendations, which concluded proper repatriation never took place. The minority opinion of Ms. Worl was based on the assumption that when Bishop Museum filed its notice in the Federal Register that it had possession and control of the collection. Hui Malama received possession through a loan, the intent of which was never to be returned. In conclusion, the rehearing of this dispute without any error, procedural or otherwise committed by the Review Committee members, was totally unnecessary and the decision in St. Paul must stand. Hui Malama had possession and control before the rest of the claimants were chosen. Mr. Harris stated that Hui Malama was not allowed to act as their agent in this matter.

Mr. Steponaitis asked if the *ohana* had a relationship with the region involved in this dispute. Mr. Diamond stated that based on the information provided in Mr. Harris's statement regarding genealogy and names, the *ohana* came from the portion of the island where Kawaihae Cave is located.

Mr. Adrian Kealoha Keohokalole, Keohokalole Ohana, stated his *ohana* was one of the 13 claimants in this dispute. Mr. Keohokalole described his genealogical connections to Kawaihae Cave. He stated that his *ohana* is a Native Hawaiian organization which has been involved in Native Hawaiian education projects for the past 12 years, as well as repatriation of ancestral remains and funerary objects for the past 11 years. The Keohokalole Ohana is aligned with the Royal Hawaiian Academy of Traditional Arts and believes the Review Committee's findings and recommendation from the St. Paul meeting should stand.

Mr. Dennis Kaiwi Keohokalole, Keohokalole Ohana, stated the Review Committee should follow through with its earlier decision to have the Bishop Museum fulfill its obligations under the NAGPRA law to the 13 recognized claimants in this dispute and restore integrity to this process. The Review Committee has an obligation to the majority claimants. Mr. Keohokalole stated they were cognizant of the fact that some members of the Review Committee have ties with the minority claimant group and should recuse themselves. Otherwise, they simply ask the Review Committee members to apply fairness in their deliberations.

Ms. Emalia Keohokalole, Keohokalole Ohana, stated she was proud to be present with her two brothers and was also speaking on behalf of two siblings not present at the meeting, Ho'opili (phonetic) and Keawahelulu (phonetic). Ms. Keohokalole stated that her family has significant lines of ancestry and do not take this standing lightly. Family is very important to Hawaiian people, and from family many deeply held traditions and practices are passed down from one generation to the next. Traditionally, special attention and utmost respect are given to the care of ancestral remains and related funerary objects. From this perspective, the Keohokalole Ohana requests the Review

Committee's assistance in settling this matter. No monetary worth should be assigned to such objects as they are treasures of inestimable value for all *kanaka* (people). Ms. Keohokalole asked how the artifacts could be appreciated in the practice of tradition if they are removed and placed in an inaccessible location. One claimant group should not make the removal decision for other claimants. The Keohokalole Ohana urged the Review Committee members to reach into their hearts and consider the impact of their decisions with regard to the dispute.

### **Public Comment**

Ms. EiRayna Adams stated that 18 years ago at a business meeting of the Daughters and Sons of Hawaiian Warriors' meeting, Mr. Edward Ayau was given permission to represent them as a Hawaiian organization compliant with and answerable to law and Hawaiian tradition. Ms. Adams stated she was withdrawing her support of Hui Malama and applying to be recognized as a Hawaiian organization under NAGPRA regulations. Ms. Adams stated she would like to nominate Mr. Van Horn Diamond to be considered for the Review Committee in order to provide Hawaiian representation on the Review Committee. Mr. Diamond is familiar with royal traditions and approved by the four royal societies. Ms. Adams stated that she stands with Mr. La'akea Suganuma.

Mr. William Aila stated that he is descended from farmers and fishermen. He learned from his grandmother, and when she passed she was buried with items of her choosing. No claims were made for these items; to challenge her wishes would be disrespectful. Mr. Aila stated the objects from Kawaihae Cave were stolen. Some people view their return to the caves as a flaw in the process, but Mr. Aila stated their return made things *pono* (whole). This discussion should be about doing what is right, not about whether the process was flawed or who was recognized.

Mr. Van Horn Diamond, Van Horn Diamond Ohana, stated they were glad the Review Committee was in Honolulu to hear this issue. The Review Committee's 2003 recommendation affirmed that the repatriation process was flawed and the 83 items need to be retrieved in order to implement the non-flawed process. The Diamond Ohana has the following position: 1) the 2003 NAGPRA recommendation is herein endorsed with a request that its implementation be carried out in an expeditious manner. Further, the Diamond Ohana recommends enforcement be undertaken and if deemed warranted court prosecution should be sought and implemented; 2) there is no change in the cause and reasons for the 2003 determination; 3) Hui Malama should not be accorded any special privileges over the fact that it failed to participate in the 2003 Review Committee proceedings in Minnesota; all claimants had an equal opportunity to attend and participate; and 4) many of the claimants were identified after reburial of the items, so inspection of the items by the claimants was limited to four parties early in the process. The consultation process has been limited; the Diamond Ohana has had no individual consultation regarding this matter, and the collective consultation focused mainly on the retrieval of the items.

Mr. Diamond stated that some speak of the *hewa* (wrongdoing) committed in terms of the desecration of the cave by Forbes. Likewise, actions taken during the loan process and the subsequent reburial and the refusal to allow the claimants to appropriately determine disposition is *hewa*. The Diamond Ohana looks forward to the time when all recognized claimants are able to inspect the items and work together in determining the appropriate classification for these items and to have the items available for all to codetermine their final disposition. Until then, the Diamond Ohana respectfully and strongly urges favorable Review Committee response to upholding the 2003 determination, as well as finding ways to bring about constructive closure to this matter.

Mr. Diamond thanked the Review Committee for taking the time to address Hawaiian concerns. As chairman of the Oahu Burial Council, Mr. Diamond stated he would provide the Review Committee members with a copy of the administrative rules and definition of Native Hawaiian organization and lineal and cultural descent.

Ms. Alice Liliani Greenwood stated that lineal descent in Hawaii is very complicated, both historically and genealogically. Ms. Greenwood described her complicated genealogy as an example. Ms. Greenwood stated that her family has actively participated in the community as cultural monitors, a difficult and complicated task. Ms. Greenwood described the archaeology process that she observed and expressed concern at the level of destruction of the sites. Ms. Greenwood thanked the Review Committee members for the opportunity to speak.

Mr. William Ha'ole read a statement for Mr. Hailama Farden. Mr. Ha'oke stated that the statement also had the concurrence of the Hale O Na Ali'i O Hawaii. Mr. Farden, Iku Hi'i Nui IV, State President of the Hale O Na Ali'i O Hawaii described the history of Hale O Na Ali'i O Hawaii which was first established in 1886 under King Kalakaua. Members of Hawaii's lineal royal family have always participated as members of the Supreme Council, an

overseeing entity, since the society's inception. The society's mission and founding principles include assuring that items of royal origin and significant cultural patrimony are cared for in a manner of respect and proper protocol, and the society's practice is to address concerns regarding the means by which any royal item or culturally significant item is handled. Mr. Farden identified many elders of the society. Mr. Farden stated that Mr. Diamond read the statement of the Hale O Na Ali'i O Hawaii at the September 2004 Review Committee meeting. The testimony affirmed the society's royal and historic past, to include that the society had used the same burial rituals in Hawaii since they were first documented in print in 1921. The Hale O Na Ali'i O Hawaii is confident of their Native Hawaiian organization status and continues to seek recognition as a Native Hawaiian organization under NAGPRA. With regard to the Forbes Cave cultural items, the Hale O Na Ali'i O Hawaii is concerned about the mishandling of the artifacts and feels it imperative that all Forbes Cave items, the 83 Kawaihae Cave items loaned to Hui Malama and the items at Hawaii Volcanoes National Park, be returned immediately for reevaluation by all claimant parties. Since the 83 Kawaihae items are on loan to Hui Malama, Hui Malama should be responsible for the theft of these items if they continue to refuse to return them. Seven chapters of the Hale O Na Ali'i O Hawaii collectively request the Review Committee's support of the return of the items, as they await official recognition as a Native Hawaiian organization.

Mr. Kealoha Kuhea stated he was a Native Hawaiian, born on Hawaii, and he was not a Native American. Mr. Kuhea stated that NAGPRA was written for Indians without genealogy, but Hawaiians have genealogy and know the complete histories of their families. Mr. Kuhea stated his claim to the Forbes Cave items was denied by the staff of the Bishop Museum who stated he was not Hawaiian, although he has documentation that proves he is Hawaiian. Mr. Kuhea described specific family history regarding Forbes Cave and stated that the items in the cave were not funerary but were placed there for safekeeping. The land Forbes Cave is on belonged to his ancestors and now Mr. Kuhea is denied access by the Department of Hawaiian Home Lands. Mr. Kuhea asked why don't they return the property to the original owners? Mr. Kuhea stated that there is discrimination against Native Hawaiians continuing today and gave personal examples. Mr. Kuhea strongly stated that Americans should leave Hawaii and the Hawaiians alone.

Ms. Lilikala Kame'eleihiwa, genealogist and professor, Kamakakuakalani Center for Hawaiian Studies, gave a Hawaiian prayer. She stated that she descends from chiefly lineage, as does every Hawaiian, and all Hawaiians have *kuleana* in this matter. The *iwi* and objects buried with the ancestors are very important to Hawaiians. Ms. Kame'eleihiwa stated she was not asserting herself as a claimant, although she could, but was supporting the work of Hui Malama. Hui Malama has 15 years of repatriation work involving hundreds of ancestral remains from museums across the world. Repatriation work is very serious, and she respects those who do this important work. Regarding the Kawaihae Cave issue, Ms. Kame'eleihiwa stated she supports the minority decision. Some call for the return of the items to the Bishop Museum as the rightful owners, but how can the recipient of stolen goods be the rightful owner. For the other claimants, Ms. Kame'eleihiwa respectfully asks that in this instance the *moepu* be left where they are, with the ancestors. Removing the objects would be disrespectful, regardless of whether a burial was from hundreds of years ago, the present day, or a reburial such as this. Ms. Kame'eleihiwa objects to the idea that Hawaiians have lost their culture. She acknowledged that there has been colonization, Christianization, and confusion about culture. Culture is not learned through artifacts but through people, and suggested the Center for Hawaiian Studies and Native practitioners. In response to the position that the objects were placed in the cave for protection subsequent to the burials, Ms. Kame'eleihiwa respects that position but in the absence of clear proof feels it would be better to err on the side of caution and treat the objects as funerary objects. Ms. Kame'eleihiwa asked Hawaii Volcanoes National Park to return the objects from Kawaihae Cave, as they were stolen. Ms. Kame'eleihiwa stated that no Hawaiian people have been elected as royalty in the recent past. Any people claiming to speak on behalf of the Hawaiian people as *ali'i* were not elected by the Hawaiian people. Ms. Kame'eleihiwa stated that Native Hawaiian organizations should be staffed by Native Hawaiians. Ms. Kame'eleihiwa urged the Review committee to bear in mind the difference between Western law and traditional customary rights, which NAGPRA is trying to make equal.

Mr. Kanaloa Koko stated he was descended from Hawaiian royalty and was with the Kaiwi Oelo claimant group. Mr. Koko discussed the history of the ownership of land in Hawaii. King Kamehameha formed a unification with the chiefs and they gave up their rights so Hawaii would be civil, and everything was placed under King Kamehameha's ownership. This is stated in one document of ownership. King Kamehameha made another document of ownership to the subjects and the Hawaiian people of their undivided one-third interest in the kingdom. The Forbes Cave items were removed before the lands went to the Hawaiian Homes Commission and so the

ownership was still with the monarchy and the Hawaiian people. Mr. Koko stated he was a late claimant to the process and made a request to view the objects.

Mr. Attwood Makanani, Protect Kahualawi Ohana, stated he has worked for years in a *ho'onooponopono* (to make right) process in the repatriation and returning of ancestral remains. They have worked as traditional practitioners to try to right this injustice. Hui Malama worked to address the need before families became involved to stop the continued destruction of sacred sites, because in time more families would step forward. The process was educational and allowed others to step forward and begin discussions and application to accept this responsibility. Mr. Makanani stated that the Review Committee has helped Hawaiians share individually how much and how deeply they're affected and care about family *kuleana*. The Review Committee will not be able to find a solution because the members are bound by their law and Hawaiians are bound by traditional law. Mr. Makanani hoped the Review Committee would make good decisions and listen seriously to what is Hawaiian *kuleana* and not others.

Ms. Dutchie Kapu Saffery stated that she was speaking as a member of the public and not as a claimant. She stated she was new to NAGPRA and attended her first meeting in Washington, DC in September 2004. She identifies with Hawaiians who spoke at that meeting and the Honolulu meeting, although at times what was said was not what was in her heart. Ms. Saffery stated that the Hawaiians she knows are forgiving, loving people, and the anger and disturbance that she sees is painful. Ms. Saffery prays that healing will come to her people. Ms. Saffery stated she places a prayer over the Review Committee to protect their journey to come to Hawaii and hear the people. Ms. Saffery thanked the Review Committee and stated she speaks for the Hawaiians that love and forgive and honor the *ali'i*.

### **Review Committee Final Discussion**

After discussion, the Review Committee members unanimously agreed to the following recommendation: With regard to the dispute between the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum, upon review of the additional evidence presented and the additional testimony, the Review Committee reaffirms the recommendation and findings made at the St. Paul meeting and published in the Federal Register on August 20, 2003. Mr. McKeown stated that the National NAGPRA Office would provide the affected parties and the Bishop Museum with a letter detailing the recommendation.

Ms. Worl stated she will follow her cultural protocol that when a board makes a decision, all members are bound by the decision, and she affirmed her support of the board. Mr. Bailey stated he was impressed with the sincerity of the beliefs of everyone involved, and he stated that by his vote he was not taking sides but was commenting on the process. Mr. Monroe stated this was an incredibly difficult matter and seconded Mr. Bailey's comments recognizing the sincerity and conviction of the participants without regard to stating who is right or wrong. The decision of the Review Committee was based on their judgment that the process was flawed and excluded involvement on the part of claimants and in other fundamental ways, regardless of the intent or purposes of those involved in the initial loan. Mr. Monroe hoped that all parties would work in good faith in the traditions of Native Hawaiians and Native Hawaiian culture to come to resolution regarding disposition. Ultimately this can be resolved most effectively by the legitimate claimants putting aside the past and moving forward to reach resolution that is in the best interests of Native Hawaiians, both past and future, and Native Hawaiian culture and traditions. Ms. Metcalf agreed and stressed the importance of respectfully handling the human remains and objects. While the issues are very difficult, the parties must work together to resolve differences and ensure proper treatment and respect of human remains and objects.

The St. Paul finding contains the following wording, "The Review Committee recommends that...the 83 items be made available to all parties in the consultation." The Review Committee noted for the record that the St. Paul finding requires that there be consultation and discussion between the Bishop Museum and all claimants regarding the means by which access shall be provided.

### **Discussion of the Statutory Definition of Native Hawaiian Organization**

#### **Mr. Colin Kippen**

Mr. Colin Kippen stated he served as former senior counsel to Senator Inouye on the Senate Committee on Indian Affairs, and would be providing context on a December 2004 hearing held to address the NAGPRA definition of

Native Hawaiian organization. The hearing was preceded by a NAGPRA workshop for the Hawaiian community and State and Federal agencies sponsored by the Senate Committee on Indian Affairs. The workshop was intended as a means to educate the community and increase understanding on NAGPRA law and how it works. Over 70 people were in attendance and Mr. McKeown was the invited presenter. The witness list and public testimony was provided to the Review Committee in their meeting materials. The witness list consisted of many representatives from Hawaii, including the State of Hawaii Department of Land and Natural Resources, the Historic Preservation Division, the Department of Hawaiian Home Lands, Hui Malama I Na Kupuna O Hawai'i Nei, the Office of Hawaiian Affairs, the counsel of Hawaiian Homestead Associations, the Royal Hawaiian Academy of Traditional Arts, the Kekumana Ohana, the Van Horn Diamond Ohana, Na Papa Kanaka Opu'u Kahala, and an expert on the history of NAGPRA implementation in Hawaii. The legislative hearings were well attended and added substantially to understanding how NAGPRA works in Hawaii and some of the refinements and changes that might be necessary. The record of the hearing has been set and may be viewed online at [www.indian.senate.gov](http://www.indian.senate.gov), Past Hearings, Testimonies of the 108<sup>th</sup> Congress. Mr. Kippen is hopeful that the information developed at the legislative hearing is helpful and provides a better understanding of the NAGPRA law in Hawaii.

### **Review Committee Discussion**

Mr. Bailey stated that NAGPRA is hard to implement in Hawaii, in part because the concept of lineal descent is different in Hawaii than in other parts of the country and the definition in NAGPRA doesn't take that into consideration. Mr. Bailey stated that there is no way to straighten out the many different Native Hawaiian organizations and/or prioritize claims. Ms. Mattix stated that the regulations are a further interpretation of the statute, and 43 CFR 10.14 in the regulations lists the criteria for determining lineal descent. Mr. McKeown stated the statute does not contain a definition for lineal descent. The regulatory text was developed to a very high standard; a lineal descendent by definition has a priority claim over any Indian tribe or Native Hawaiian organization and needs to be consistent with its common meaning that there is an unbroken line between a named individual and the claimant. The definition of Native Hawaiian organization was carefully crafted by the Senate and House staff when developing the final statute. There is a priority order for Native Hawaiian organizations with a distinction between those organizations or Indian tribes that are clearly culturally affiliated and those where it's not clear but are considered culturally affiliated given the preponderance of the evidence.

Mr. Steponaitis stated that after hearing the testimony from Hawaiians the Review Committee needs to look at the definition of Native Hawaiian organization and consider some of the suggestions that have been made about how that definition may be tightened or improved. This can be accomplished through changes in legislation and through further rulemaking. Ms. Worl stated the Review Committee can also make recommendations through its report to Congress. Mr. Monroe stated that efforts to determine which organizations comprise Native Hawaiian organizations should probably not be made at the Federal level but left to Native Hawaiians to decide. Based on the testimony at the meeting, other compelling issues also exist, most of which should be handled by Native Hawaiians. Ms. Worl suggested to Mr. Kippen that future consideration of this issue by the Senate Indian Affairs Committee should include the testimony at the Review Committee meeting, including the concept that more Native Hawaiians from the old social order are becoming active in repatriation. Mr. Kippen stated he would pass along the Review Committee's concerns and ideas. Mr. Steponaitis agreed that refinements to the definition should come from the Native Hawaiian community, and the Review Committee can be seen as a vehicle for amplifying that voice. Mr. Bailey agreed with Mr. Steponaitis, but expressed concern about the difficulty of Native Hawaiian organizations participating in the process. Ms. Hutt stated that the definition of Native Hawaiian organization includes all of those who have been recognized by a Federal agency or a museum in their consultation process, which is actually more inclusive than the requirement of Federal recognition for Indian tribes on the mainland. Ms. Hutt stated the Review Committee in their discussions should consider each issue before them in a step-by-step fashion, resolving each step as a matter of fact. Some matters may still need to be resolved even after the Review Committee is done with an issue. In addition, the Review Committee can make creative suggestions as to how these parties might go forward to resolve the remaining issues that come before them.

## **Request for Recommendation Regarding Disposition of Culturally Unidentifiable Human Remains from Fort Douglas, Utah**

### **Mr. Dell Greek, Army Reserve Command**

Mr. Dell Greek, Native American Coordinator for the Army Reserve Command, stated he was responsible for NAGPRA compliance for all lands managed by the Army Reserve Command in all 50 states. Mr. Greek is seeking the Review Committee's recommendation concerning the return of a woman believed to be of Shoshonean ancestry to a coalition of Indian tribes, the Great Basin Inter-Tribal NAGPRA Coalition, which represents 30 federally recognized Indian tribes in the Great Basin area. The human remains were recovered from the basement of an Army officer's quarters on Fort Douglas, Salt Lake City, in 1939. Following the passage of NAGPRA and inventory completion, the Army Reserve Command was notified of the human remains.

Mr. Greek stated that after preliminary investigation, he identified and notified 15 Indian tribes that could be potentially affiliated with the burial. Two Indian tribes responded and requested additional information, but after further discussion with each Indian tribe, neither Indian tribe submitted a request for repatriation. The State of Utah's Department of Indian Affairs also failed to find any Indian tribe within a reasonable distance of Salt Lake City who might be culturally affiliated and was willing to receive the human remains. Mr. Greek then executed a cooperative agreement with the University of Utah Natural History Museum, where the human remains have been curated from 1939, to provide a safe place to keep the human remains.

In November of 2004, Mr. Greek asked the Great Basin Inter-Tribal NAGPRA Coalition to consider this burial as a potential repatriation. By consensus of all member tribes, they agreed to accept repatriation and submitted Great Basin Inter-Tribal NAGPRA Resolution 04-001 to claim the human remains. Mr. Greek stated he provided the Review Committee with more detail in writing, but the Army Reserve Command's position on cultural affiliation was that the human remains are Shoshonean. As the Great Basin Inter-Tribal Coalition includes all Shoshonean Nations of the Great Basin, this repatriation would be appropriate.

### **Review Committee Discussion**

Mr. Steponaitis asked if the human remains had undergone identification and forensic documentation. Mr. Greek stated that the human remains had been examined by a physical anthropologist at the University of Utah, the museum anthropologist, and the Army physical anthropologist. Each concurred with the original findings by the physical anthropologist at the University of Utah that the human remains were comparative to Shoshonean remains that have been collected throughout the Great Basin area. Mr. Bailey commended Mr. Greek for his work in trying to identify the human remains, and stated that the conclusion that the human remains were Shoshonean was very reasonable. Ms. Worl moved that the Review Committee support the Army's recommendation to repatriate the human remains found on the lands of Fort Douglas, Utah, to the Great Basin Inter-Tribal NAGPRA Coalition. The Review Committee members agreed. For purposes of the recommendation, Mr. McKeown clarified the following points with the Review Committee and Mr. Greek. The recommendation was for repatriation to the coalition as a whole, and not any individual Indian tribe(s). The coalition and the members of the coalition are federally recognized Indian tribes. Any further progress on this disposition of culturally unidentifiable human remains would occur following publication of a Notice of Inventory Completion in the Federal Register providing other parties the opportunity to come forward if they feel that they are culturally affiliated. Mr. Bailey stated that the coalition was of culturally and historically related Indian tribes, and Mr. Steponaitis suggested that be included in the recommendation. Mr. McKeown stated he would send a letter to the parties indicating the recommendation and conditions and notifying the parties that they may proceed.

### **Review of the Committee's Draft Report to Congress for 2002-2004**

Mr. Steponaitis stated that he recalled from the September 2004 meeting in Washington, DC, that he and Mr. Willie Jones felt that some things in the report to Congress needed to have considerable discussion. Some issues were a factual summary; other issues, such as recommendations to Congress and recommendations about legislation, were very serious and require sufficient time on the meeting agenda for discussion. Mr. Steponaitis also recalled that Mr. Jones felt this set of recommendations needed to come from the Review Committee members. Mr. McKeown explained that while he provided an outline and factual information, Ms. Worl and Mr. Bailey drafted the original report currently under consideration.

With respect to the report before the Review Committee at the meeting, Mr. Steponaitis stated that at this point he was uncomfortable with recommending amendments to the law until the Review Committee could have substantial discussion on the amendments. Mr. Steponaitis proposed deleting paragraph 3 of the recommendations, "Amendments." Mr. Monroe suggested, instead of permanently deleting the amendments, that the Review Committee would place them on hold for consideration at a later date. Mr. McKeown gave a brief historical review of the amendments. Amendment 1, "Protect Native American cultural items excavated or discovered on State or private lands," was a long-standing amendment present in every report to Congress since 1992. Amendment 2, "Provide any monies collected as civil penalties under 43 CFR 10.12 to the National Park Service to further enforcement activities," was present in more recent reports to Congress. Amendment 3, "Clarify that the Act applies to all Native American cultural items, not just those for which a present-day Indian tribe or Native Hawaiian organization can be identified," was a new amendment that references the 2004 Campbell amendment. Mr. Monroe stated that he would prefer that the Review Committee have further opportunity for discussion. The Review Committee members agreed to defer the amendments and not include them in the report to Congress for 2002-2004.

On page four of the report, Mr. Steponaitis recommended deleting two paragraphs. The paragraph that began, "The Secretary of the Interior is authorized to collect civil penalties," and the paragraph that began, "Lastly, the Review Committee is alarmed by the recent decision." Mr. Bailey stated he supported the idea behind the wording of the paragraph, but agreed that the Review Committee as a whole should discuss it. The Review Committee members agreed to defer the two paragraphs and not include them in the report to Congress for 2002-2004.

Mr. Steponaitis stated he would like to delete parts of paragraph two on page three of the report, which began, "Due in part to inadequate funding." After discussion, the Review Committee agreed to delete the following sections of the paragraph, "the National NAGPRA Program has been unable to publish the two proposed rules that were approved by the Review Committee (43 CFR 10.11 and 10.13)." Ms. Hutt clarified that 43 CFR 10.13 was published as a proposed rule and 43 CFR 10.11 was close to being published as a proposed rule for public comment. Mr. Steponaitis recommended deleting the sentence "The National NAGPRA Program has never assessed a civil penalty, although some situations of failure to comply are well known to the Review Committee." The Review Committee agreed to delete the second part of the sentence and place the first part of the sentence at the end of the preceding paragraph, "The National NAGPRA Program has never assessed a civil penalty." The Review Committee members agreed to leave the rest of the paragraph as it was accurate as of the end of 2004.

Ms. Metcalf recommended including language that additional funds be appropriated to allow for the National NAGPRA Program to provide training. The Review Committee members agreed to include that as a recommendation. The Review Committee members agreed to delete paragraph 1 of the recommendations, "Costs of Administering NAGPRA." Ms. Hutt stated she would endeavor to provide the Review Committee with accurate and complete reports of program activities for their consideration in making recommendations. The Review Committee members agreed to include paragraph 2, "Costs to Comply with NAGPRA." The Review Committee members unanimously agreed to accept the 2002-2004 Report to Congress with the changes as discussed at the meeting. Mr. McKeown stated he would provide the final report to the Chair for consideration and approval.

### **Nominations of the Committee's Seventh Member**

Mr. McKeown stated that the nomination process in the statute calls for three members of the Review Committee to be appointed by the Secretary of the Interior from nominations received from national scientific and museum organizations, three members of the Review Committee to be appointed by the Secretary of the Interior from nominations received from Indian tribes and Native Hawaiian organizations, and one member of the Review Committee to be selected by the Secretary from nominations compiled by and with the consent of the other six Review Committee members. In the meeting binder, the Review Committee members were provided with a list of individuals whose names were suggested by the members at the previous meeting, along with documentation and letters of commitment provided by the individuals. Two people declined to be considered for nomination; Ms. Lani Ma'a Lapilio and Ms. Vera Metcalf. Four individuals did not respond to the initial inquiry: Mr. Gordon Pullar, Mr. Ray Soon, Mr. Durbin Feeling, and Mr. Timmy Thompson. Mr. Bailey provided additional information on Mr. Feeling and Mr. Thompson.

Ms. Worl stated that the Review Committee did support Ms. Metcalf's nomination and acknowledged Ms. Metcalf's contributions to the Review Committee, but understood her reasons for declining the nomination. The Review

Committee members discussed specific topics for consideration by the Secretary in the selection process. Mr. Steponaitis stated he sensed the intent of Congress was that the seventh member would be a bridge between the museum and scientific community and the Native community, someone who knows both worlds and was comfortable with both worlds. Mr. Bailey stated that the Review Committee needs to have Native representation of the varying types of sociocultural issues of concern to the Review Committee, such as culturally unidentifiable human remains. The Review Committee has not had representation by a Native American from the geographical locations with the highest percentage of culturally unidentifiable human remains, such as in the Mississippi, Ohio, and southern gulf coastal region of the United States. Mr. Monroe stated they have heard testimony that the Review Committee has never had a Native Hawaiian representative. Ms. Worl stated that she supports the Native Hawaiian representation, as well as Native Alaskan representation. Mr. Steponaitis stated that the Review Committee could benefit from the expertise of a physical anthropologist. Mr. McKeown stated that there is no limit on the number of names submitted for nomination to the Secretary.

Mr. Steponaitis stated that everyone on the list was someone he could support, and recommended forwarding the complete list, as well as a transcript of the Review Committee's discussion, to the Secretary of the Interior for consideration. The Review Committee members unanimously agreed to forward the following names for consideration by the Secretary of the Interior: Ms. Lane Beck, Arizona State Museum; Mr. Fred Cachola, retired, formerly of Kamehameha School; Mr. Durbin Feeling, University of Oklahoma; Ms. Lynne Goldstein, Michigan State University; Mr. Colin Kippen, formerly of the Senate Indian Affairs Committee; Mr. Sven Haakenson, Alutiiq Museum Archaeological Repository; Mr. Leigh Kuwanwisiwma, Hopi Cultural Preservation Office; Ms. Patricia Lambert, Utah State University; Mr. Kirk Perry, Chickasaw Nation of Oklahoma; Mr. David Hurst Thomas, American Museum of Natural History; and Mr. Timmy Thompson, Muskogee Creek Nation. Mr. McKeown stated that a packet containing recommendations and nominations would be provided to the Secretary of the Interior.

### **Discussion Regarding the Location of the Committee's Next Meeting**

Mr. Bailey stated that the Review Committee had previously canceled a meeting scheduled in Albuquerque, NM. After discussion, the Review Committee members agreed to hold the next Review Committee meeting in Albuquerque, NM. The DFO will work with the Review Committee members to schedule meeting dates. The Review Committee members agreed to hold a teleconference in the interim to discuss administrative activities. One possible agenda item would be consideration of a proposal for revision of the dispute resolution process.

### **Review of Activities of the National NAGPRA Program**

Ms. Worl suggested that due to time constraints the review of activities of the National NAGPRA Program could be deferred until the teleconference meeting. Ms. Hutt stated that at the end of the month, the midyear report would be finalized, which would contain many updates on recent activities. Ms. Hutt expressed appreciation for the efforts of the Review Committee members, both prior to the meeting in the review of information and for the decision making process at the meeting. Ms. Worl stated she would like to have a discussion of the placement of the NAGPRA civil penalties officer, which is currently placed under the Assistant Director of Cultural Resources rather than under the National NAGPRA Program. Mr. Steponaitis stated he remembered in dealing with the National NAGPRA Office a few years ago there was a discussion about this issues, and there were very good reasons for the separation. Ms. Mattix stated that since Ms. Hutt has been program manager, some different reporting structures have been implemented. Ms. Hutt stated she would also include an explanation of the relationship of Ms. Mattix and her office to the Review Committee.

## **Closing Remarks**

On behalf of the Review Committee members and the National NAGPRA staff, Ms. Worl thanked the audience for their testimony, for their presence at the meeting, for their contributions and education, and for the warm welcome to Hawaii. Ms. Worl expressed appreciation for Ms. Metcalf's contributions to the meeting and the Review Committee and stated she would be missed. Ms. Worl thanked her fellow Review Committee members for their contributions and assistance.

## **Meeting Adjournment**

The meeting adjourned at 3:20 p.m., on Tuesday, March 15, 2005.

Approved on behalf of the Review Committee –

/s/ Rosita Worl

September 12, 2005

\_\_\_\_\_  
Ms. Rosita Worl  
Chair, Native American Graves Protection  
and Repatriation Review Committee

\_\_\_\_\_  
Date

Certified –

/s/ C. Timothy McKeown

September 15, 2005

\_\_\_\_\_  
Mr. Timothy McKeown,  
Designated Federal Officer, Native American Graves Protection  
and Repatriation Review Committee

\_\_\_\_\_  
Date